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Fra. Hargrave

5 Kc

# THE LAW OF EJECTMENTS: SHEWING

The Nature of *Ejectione Firme*; the Difference between it and Trespass, and how to be brought or removed where the Lands lie in *Franchises*. In what Cases this Action lies, or not. Of the old Way of sealing Leases, and of the new Practice. Of confessing Lease, Entry, and Ouster. Of what Things *Ejectione Firme* lies, or not. Of Declarations in this Action. Of *Venues*, Issue, Trial.

AS ALSO,

Who are good Witnesses or not in the Trial on Ejectment, and what shall be allowed good Evidence or not, either as to Records or Matters *in Fait*. Where Bills, Answers, and Depositions, shall be read on a Trial, or not, in several good Resolutions.

Together with

The Learning of Special Verdicts at large, relating to Titles of Land and Estates, in several Rules; and of Judgments, with their several Forms of Entries in Special Cases; and of *Habere facias Possessionem*, how to be executed; and in what Cases a new *Habere facias Possessionem* shall be granted. And Lastly, Of Erroneous Judgments, and Writs of Error, and several other Matters, all relating to Actions of Ejectments.

## The Second Edition.

With Additions of late *Rules of Practice*, and *adjudg'd Cases*; very necessary for all Lawyers, Attorneys, and other Persons, especially at the Assizes, &c.

In the SAVOY:

Printed by J. Nutt, Assignee of Edward Sayer Esq; for D. Browne, A. Churchill, J. Malthoe, and J. Hartley. 1713.



MVSEVM  
BRITANNICVM

PREFACE  
TO THE  
READER.

UPON the first View of the Title of this Treatise, I doubt not but many Persons will slight it, being upon a Topick well known and understood (as they imagine) by even every Pretender to the Law: There's not the least Sollicitor or Attorney in any Nook of Cornwall, or Corner of Cumberland, but thinks he is Privy to the whole

A Learn-

## The Preface

*Learning of Ejectments. And yet if they would take the Pains to peruse the ensuing Sheets, they doubtless may be of another Opinion, and will find very useful and proper Matter relating to an Action which concerns the greatest Titles in the Kingdom, and has made so great a Noise at the Bar, and in the Circuits for Sixty Years last past.*

*Besides, if there happen any material Mistake in this Action, the Remedy is very chargeable. I remember Mr. Levett's Case of the Inner-Temple; (the Argument whereof made by a very Ingenious Professor of the Law, I have herein inserted.) The Record was an Issue of Trinity Term 1696. and the Demise is laid the 10th of April 1697. Habendum from the 25th Day of March then last past; whereas the Demise should have*

have been laid the 10th of April 1696. And tho' Mr. Levett had a Verdict, yet he could not have Judgment, but was forced to a new Trial at Bar. And many more such Instances might be given.

I shall not dare to deliver my Opinion concerning the Change of Real Actions into Ejectione Firme, but I know many Grave Lawyers have grumbled at the Inconveniences of a Man's being too obnoxious to be trick'd out of Possession.

However, this we must all allow, That since the said Alteration, the Common Law hath lost a great Part of the Beauty and Nicety of its Pleading.

I have been large under Two of the ensuing Titles ; I mean that of Evidence, and the other of Special Verdicts : Who shall be allowed as good Witnesses, or not ; and what shall be look'd upon as sufficient

## The Preface, &c.

Evidence both as to Matter of Record, or Matter en Fait, in this Action, is of great Use to be understood; and the Cases that lay dispers'd in our Books for that Purpose, I have reduced to some Method.

And as for the right and exact drawing of Special Verdicts, we all own it to be an undeniable Argument of a good Understanding in the Law, and of very great Consequence, especially those which concern Title of Lands and Estates.

Note, This Second Edition hath not only the Addition of some Cases omitted in the former, but of all that have been adjudged since.

As for the Errata's of the Printer, the Judicious Reader will find that they will not much interrupt the Sense; and as for my own, I humbly beg Pardon.

THE

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OF THE  
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## The COUNTING

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and the other half  
of the world  
had been  
overrun by  
the British  
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THE  
LAW  
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EJECTMENTS.

A brief Discourse of Entry into Land,  
for vesting and devesting of an Estate;  
which will give Light into the Change  
of the Law, as to the Rule of Confessing,  
Entry in Ejectment, and of Entry into  
Parcel in the Name of all.

## *Entry, and Congeable Entry.*

**S**OME take a Difference, where an Entry shall vest or devest an Estate, there ought to be several Entries into several Parcels; but where the Possession is in no Man, but the Freehold in Law is in the Heir who enters, there the general Entry into one Part shall reduce all into his Possession. *Vid. 1 Inst. 15. b.* Disseisor makes a Lease for Years of Part, Disseilee enters upon

## The Law of Ejectments.

upon the Disseisor in the Name of the Whole; this is a good Entry into all the Lands in the Hands of the Lessee, Fulgean and Frances's Case, 33 El. B. R. M<sup>r</sup>.

It was held *per Cur.* in *Lovet and Rengy's Case*, Pasc. 9 Jac. B. R. in Evidence to a Jury, that if a Disseisor make several Leafes for Years of several Parcels of Land to several Persons, and the Disseisee enter into any Part of the Land, and seal and deliver a Lease for Years of it in the Name of all, this is a good Entry into all, and a good Lease of all; and if the Lessees of the Disseisor continue Possession, this is an Ouster, and the Lessee of the Disseisee shall maintain *Eject. Firme* upon this of all; but otherwise it is where the Termors claim by and under several Titles, for there he who pretends a Right ought to enter upon every Termor. M<sup>r</sup>. I Inst. 252. *Accord'.*

Disseisor of Lands in Three several Vills of A. B. and C. levies a Fine of that in A. to J. S. The Disseisee within Five Years makes a Letter of Attorney to enter into all the Three, the Attorney enters into B. and C. in the Name of all; *per Cur.* this is not an Entry into that in A. for J. S. had there distinct Freehold *per Title*, and for every Freehold several Entry ought to be, Dyer 337. b. 9 H. 7. 25.

For every  
Freehold, se-  
veral Entries.

The Entry of  
a Stranger  
not to be ap-  
portioned.

If A. seal a Lease upon Black-Acre and White-Acre to B. C. a Stranger enters into White-Acre, this is an Entry into both Acres, and B. may have *Ejectione Firme* against C. for both Acres, for C. cannot apportion his Wrong, as was held by Justice Hutton, in Evidence

# The Law of Ejectments.

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dence to a Jury at Sarum, and agreed by *Jermin, anno 1649. Mss.*

*Vid. Coke on Litt. 52. a. and 252.*

*A. Occupies White-house, Black-house and Red-house: J. S. who had a Right to all entered into White-house and departs, leaving A. there; then he entered into Black-house and departed, leaving B. there; then he entered into Red-house and there seals a Lease for Years to J. N. of that House, and naming the other Two Houses: J. N. brought *Ejectione Firme* for the Two Houses in which the Lease was not delivered, and the Opinion of the Court was against him, that he was barred in that Action; for the Entry or Continuance of him who occupied it before, defeated the Entry of the Plaintiff or Lessor, and the Plaintiff was forced to be nonsuit. Alias if he had left one behind him in each House, M. 28 & 29 El. B. R. Earl of Kent's Case. *Hughes* 72.*

Entry, and  
leaving a Per-  
son in the  
House to keep  
Possession.

*A. disseiseth B. of White-Acre 1st of May, and of Black-Acre 2d of May; B. enters into one Acre in the Name of both, this is good for both if they be in one County, per *Frowick*, 9 H. 7. 25. a. alias if they be in divers Counties, ib.*

*A. Lessee for 21 Years of White-Acre, and Black-Acre is ousted by B. who lets White-Acre to C. for 10 Years, and Black-Acre to D. for 10 Years, A. enters into White-Acre in the Name of both: It is not good to Wheresoever reduce Black-Acre, but he ought to make several Entries, because C. and D. have as high an Estate as A. *tenus per Cur. in Elizeus Fox's Case, 4 Car. B. R. Ex relatione Maj. Maynard.**

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Where

## The Law of Ejectments.

*Where the Entry for one is Entry for another, or not.*

Entry of one Tenant in Common, is Entry for the other. *Hob. 120.* Altho' he enters generally, *ib.* So if he enter and claim all. *ib.*

Lessee for Life acknowledgeth a Statute, makes a Feoffment, the Conifeer extend, this shall rewest the Reversion. *Whetson's Case,* 41 *Eliz.*

*Difference between Right of Entry, and Title of Entry.*

**Right of Entry, Quid.**

It is, when one seised of Land in Fee is disseised of it: Now the Disseisee hath Right of Entry into the Land, and may enter when he will, or he may have a Writ of Right.

Right is, where one hath a Thing which was taken from another *per Tort*, as by Disseisin, &c. this Challenge or Claim which he hath who had the Thing, is termed a Right, *Plo. 484.*

If *A.* devise Lands to *B.* and *C.* his Executors to sell, and die, the Heir abates; *B.* and *C.* have Right of Entry, upon the Book of 9 *H. 6. 25. a.*

**Tolled by Discent.**

If *A.* enfeoffs *B.* upon Condition, and *B.* is disseised by *C.* *C.* dies seised, and the Land descends to *D.* the Heir of *C.* this Discent takes away the Entry of *B.* for *B.* hath a Right to the Land; and shall recover his Right by Action. 1 *Inst. 240. a.*

**Title of Entry.**

Title of Entry is, when one seised of Lands in Fee makes a Feoffment of it upon Condition,

# The Law of Ejectments.

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tion, and the Condition is broken; now after the Condition broken, the Feoffor hath Title to enter, and so he may if he will, and by his Entry the Franktenement shall be said in him presently; and it is called *Title of Entry*, because he cannot have Writ of Right against the Feoffee, on Condition, for his Right was out of him by the Feoffment, which he cannot reduce without Entry, and the Entry ought to be for the Breach of the Condition.

Where one hath Title of Entry, there no other of his own Head may enter for him, *per Chief Justice Roll and Justice Nicholas, 28 March 1650.* be it in the Case of an Infant or other, for this is a Thing elegible, as Bailiff cannot enter for Condition broken without special Command of his Master.

Dyer 222. a.

But as to a Right of Entry, where an Infant or a Man of full Age is disseised, Entry by a Stranger of his own Head is good, and vests the Estate in the Infant or other Disseisee.

I Inst. 245. a.

*Vid. Hob. 120. Small and Dale, pluis,* Where the Entry of one shall go to another, or not.

It was held *per Cur'* in *Loves and Rengy's Case, in B. R. Pasc. 9 Jac.* in Evidence to a Jury, That if a Disseisor makes several Leafes for Years of several Parts of Land to several Persons, and the Disseisee enter into any Part of the Land, and there seal and deliver a Lease for Years of all, in the Name of all, this is a good Entry into all, and a good Lease of all; and if the Lessees of the Disseisor continue Possession, this is an Ouster, and the Lessee of the Disseisee shall maintain

Disseisee sealing a Lease of Parcel in the Name of all.

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Eject.

## The Law of Ejectments.

*Eject. Firme* of this upon the Whole : But *alias* it is where the Termors claim by and under several Titles, for there he who pretends Right ought to enter upon every Termor. *Coke super Litt. 252. b. plene.*

*Aliter* had it been *Lease pro Vie. Dyer 337. b. as.*

*A. disseiseth B. of White-Acre and Black-Acre, A. lets White-Acre to C. for Life, and Black-Acre to D. for Life; now if B. would make a Lease to J. S. for Years to try the Title in Eject. Firme, let B. enter into White-Acre and place One or Two there to keep Possession for him there, and after this, let B. enter into Black-Acre, and there seal and deliver the Lease of both Acres to J. S. This is good for both, if the Parties placed keep Possession until the Lease be sealed and delivered; but the surest Way was to make several Leases, and thereupon to have several Ejectione Firme's.*

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# The Law of Ejectments.

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## CHAP. I.

*The Nature of the Action of Ejectione Firme, and of the Change of Real Actions into Ejectments. Difference between an Action of Trespass and Ejectment in Five Diversities. By it the Possession shall be recovered, and the Inheritance revested in the Lessor. Difference between Ejectione Firme, and Quare Ejicit infra Terminum; in what Court this Action is to be brought or not, and of Removal by Procedendo into inferior Courts. The Action continues for Damages after the Term is ended.*

This Action of *Ejectione Firme* includes in it self an Action of *Trespass*, as appears by the Beginning, Body and Conclusion of the Writ; for the Writ begins thus: *Si A. fecerit te securum de clamore suo prosequendo tunc pone, &c.* and so begins the Writ of *Trespass*. The Body of the Writ of *Ejectione Firme* is, *Quare unum Messuagium Vi & Armis fregit & intravit;* and all the Addition in the *Ejectione Firme* is, *Et ipsum à firmâ sua inde ejecit, &c.* The Conclusion of both is, *Et alia enormia ei intulit ad grave damnum;* and the *Trespass* and *Ejectment* are so woven and intermix'd together, that they cannot be severed; and the Entry in an *Ejectione Firme* is, *In plito Transgressionis & Ejectionis Firme.* In 6 R. 2. Tit. *Eject' Firme* a. it is called an Action of *Trespass* in its Nature. The Consequence of this is, That in this Action, Accord with Satisfaction is a good Plea. And Accord and

B 4

Satisf.

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Satisfaction for one shall discharge all the Trespassers and Ejectors; and tho' the Term (which is a Chattel Real) shall be recovered as well as Damages, yet it is a good Plea.

*Ejectione Firme* includes in it self an Action of Trespass. 9 Rep. 78. a.

*Eject. Firme* is in Part by the Realty, and in it the Possession shall be recovered by *Habere fac' Possessionem*, and by this the Possession and Inheritance shall be vested in the Lessor. 9 Rep. 77. b. 5 Rep. 105. a.

Now tho' we find few Titles of *Ejectione Firme* in our Old Books, yet it was in Use all along; it was used in Bracton's Time, and Term and Damages were recovered therein. *In tempore H. 3.* he saith, *Si quis ejiciatur de usu fructu vel habitatione alicujus tenementi quod tenuit ad terminum annorum ante terminum suum,* there the Lessee shall have a Writ of Covenant against his Lessor; and against his Vendee he shall have a *Quare Ejecit infra Terminum*; and as well against the Lessor as a Stranger, an *Ejectione Firme*.

But this Action came to be more frequent in my Lord Dyer's Time, as may appear by his Complaint in Court when he was Lord Chief Justice of the Common-Pleas; which also gives us the Reason of the Change of Real Actions into Ejectments; *All Actions* (saith he) *almost which concern the Realty, are determined in the King's-Bench by Writs of Ejectione Firme, whereby the Judgment is, Quod recuperet Terminum, and by that they are soon put into Possession.* And therefore in a Formedon it was prayed by Council that they might

The Reason  
of the Change  
of Real  
Actions into  
*Ejectione*  
*Firme's.*

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might proceed without Essoins, and feint Delays, because the Plaintiff's Title appeared, which my Lord Dyer granted, Because (said he) this Court is debased and lessened, and the King's-Bench doth increase with such Actions which should be sued here, for the Speed which is there: And (continued he) no Action in Effect is brought here, but such Actions as cannot be brought there, as Formedons, Writs of Dower, and the like. And it is my Lord Chief Justice Hale's Observation in his Preface to *Rolls's Abridgment*: *The Remedy by Assises and several Forms and Proceedings relating therunto, were great Titles in the Year-Books; and altho' the Law is not altered in relation to them, yet Use and common Practice hath in a great Measure antiquated the Use of them by recovering Possessions, and the Remedy by Ejectione Firme used instead thereof.* So that rarely is any Assise brought, unless for recovering Possession of Offices. And so of Real Actions, as Writs of Right and Writs of Entry, which are seldom brought, unless in Wales, by a *Quod ei deforceat*. But now the Entry of him that hath Right being lawful, Men choose to recover their Possessions by *Ejectione Firme*. But there was a new Way invented to try Titles of Land in personal Actions, but was not allowed, as in *Jeremy and Simson's Case*, 16 Car. 2. B. R.

It was moved for Trial at Bar on a feigned Action on the Case, upon a Wager by Agreement of Parties, to have the Opinion of the Court of the Validity of a Will; but tho' the Action was laid in Middlesex, yet being an Innovation, and the Way to subvert *Ejectione Firme's*, which have subverted the *Formedons*, and

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and it sufficiently appearing feigned on the Record, in that the Title of Land is hereby to be tried in personal Actions, it was totally denied ; but had it been by Direction of *Chancery*, the Court would do it, but would in no wise grant this.

It was said by *Ellesmere* Lord Chancellor, That until the 14 H. 7. it was never known that a Possession was removed by an Action of *Ejectione Firme*; and said, It was great Pity it was allowed at this Day for Law in *England*; and therefore was of Opinion, That an Action of Trespass, *Quare clausum fregit*, was much better to try the Title than an *Ejectione Firme*.

1. Because no Possession was removed by the one. 2. Because a Man may so plead in an Action of Trespass, as that he may make the Plaintiff disclose his Title; whereas by his *Ejectione Firme* it is no more than *Non culp'*, and then a Trial, and so out of Possession without more Busines, which, he said, was a Pick-pocket Action. *Ex MSS. 3 Leon.*  
*p. 49.*

This Action is grounded on Two Things, (*videlicet*) the Lease and the Ejectment.

It was well observed in *Eyres* and *Banister's Case*, *Moor Rep.* 418. That *Ejectione Firme* in former Times was not thought to be an Action which concerned the Lessor, but only the proper Interest of the Lessee; but now of late Times it is put in ure by the Experience of the Judges and all others, that an *Ejectione Firme* is the Suit of the Lessor, and the Lease made only to try his Title, and to recover the Possession to him, and the Suit is prosecuted at his Charge, and his Lessee is but his

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Instrument to this Purpose; and all this to avoid the Charge and Delay of a Real Action, and the Peril of being barred by a single Verdict. And *Partridge* and *Strainge's Case*, *Plo. 78.* was cited for the Purpose; if one being out of Possession above a Year, makes a Lease for Years, this is Maintenance within the *Stat. 32 H. 8.* and the Lessor and the Lessee shall lose the Value of the Land; but if such a Person be at this Day possess'd of such a Lease to try the Title, and not by Contract, that the Lessee shall hold the Land, this is no Maintenance, as hath been resolved in *B. C. B. R.* and *Star Chamber.*

*Vid. infra.*

But for the better understanding the Nature of this Action, I shall shew wherein it differs from an Action of *Trespass* and a *Quare Ejecit infra Terminum*; for tho', as was observed before, it is in a Sort a *Trespass*, yet it differs from it in several Things.

In *Trespass*, Damages are only to be recovered; but in *Ejectione Firme*, the Thing or Term it self is to be recovered as well as Damages. In Ejectment, if the Term should expire, hanging the Suit, the Plaintiff shall go on to recover Damages; for tho' the Action be at an End, *quoad* the Possession, yet it continues for the Damages after the Term ended.

Diversity  
where the  
Damages are  
only recover-  
ed, and where  
the Term.

*3 Mod. 249.* And from hence another Difference is observable in respect of Certainty. If in *Trespass* the Plaintiff declares in one Acre, and abuts it, and the Jury find him guilty *in dimidio Acræ prædictæ*, or in one Foot of it, this is good, tho' the Moiety is not bounded, they have found the *Trespass* in the Moiety of the Acre bounded, and this sufficeth

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ceth in this Action where Damages are only to be recovered : But if it were in *Ejectione Firme*, it had been ill ; for it is not certain in what Part the Plaintiff shall have his *Habere fac' Possessionem*. And from this Diversity it is, that if an *Ejectione Firme* be brought against Two Defendants, the one confesseth the Action, and the other pleads in Bar, Not Guilty, the Plaintiff cannot release his Suit as to one of the Defendants, and proceed against the other ; but in *Trespass* in such Case he may, because this Suit is only in Point of Damages. *Yelv.* 114. *Winckworth and Man.* 2 *Bulstr.* 53.

2.  
Diversity ;  
Possession a  
good Title in  
*Trespass*, but  
not in *Eject-*  
*ment*, and  
why.

Possession is a good Title for the Plaintiff in *Trespass*, if the Defendant hath not a better to shew ; *aliter* in *Ejectment*, for in *Ejectione Firme*, if the Plaintiff hath not a Title according to his Declaration, he cannot recover, whether the Defendant hath Title or not, as was *Cotton's Case*. An Infant leases Land to C. at Will, who entred and ousted S. who thereupon brought an *Ejectione Firme*, on a special Verdict no Title appeared to be in the Plaintiff, and it was objected against the Lease at Will, because it was made by an Infant, and no Rent reserved upon it, nor the Lease made upon the Land, and therefore the Lessee should be a Disseisor : *Per Cur'*, be the Defendant a Disseisor or not, it's not material here, for if the Plaintiff hath not Title according to his Declaration, he cannot recover ; and it is not like to *Trespass*, where the very Possession without other Title is good. 1 *Leon.* 215. *Cotton's Case*.

Naked

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Naked Colour is not sufficient in *Ejectione Firme*, as it is in *Trespass*; therefore if the Plaintiff make Title in *Ejectment*, this Title of the Plaintiff ought of Necessity to be answered, (*viz.*) either by Matter of Fact, or in Law, which confesseth and avoideth the Title, or traverseth it: For a naked Colour in this Action is not sufficient, as it is in *Affise* or *Trespass*, which comprehend not any Title or Conveyance in the Writ or Count, as this Action does in both; and in Godb. 159. in this Action a Man shall not give Colour, because the Plaintiff shall be adjudged in by Title. Dyer 366. Godb. 159. Piggot and Godder's Case.

Diversity; colour not sufficient in *Ejectione Firme*, and why.

Allowance of Conisance of Franchise in *Trespass* will not warrant an *Ejectione Firme*, unless the Franchise had Conisance of all Pleas, as was adjudged in the Case of the Bishop of Ely. Ter. P. 18 Car. 2. B. R.

Conisance of *Trespass* includes not *Ejectments*.

In Clerk's Case, the *Venire Fac'* was, *Ad faciend' juratam in Placito Transgressionis*, where it should have been *in Placito Transgressionis & Ejectionis Firme*, and the Court would not amend it; for though *Ejectione Firme* be but a Plea of *Trespass* in its Nature, yet the Actions are several, and therefore the *Venire Fac'* ought to be accordingly. Cr. El. 622. Clerk's Case.

5.

*Ejectione Firme* against Two Defendants; one pleads Not guilty, the other pleads, the Plaintiff replies, and so Demurrer: No Judgment shall be given on the Demurrer till the Issue be tried; for in this Action the Possession of the Land is to be recovered, and it may be, for any Thing that appeareth, he who

6.  
In Ejectment against two, one pleads to Issue, and the other demurs, Issue first to be tried.

pleads

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pleads the general Issue, has Title to it; but if it had been an Action of Trespass, and the Plaintiff will release his Damages on the Issue joined, he shall have Judgment against the other. 2 Leon. 199. Drake and Monday.

7. *Trespass* is *deins Stat.* 21 *Jac.* which names *Trespass* generally, but *Ejectment* is not. 1 *Keb.* 295. Power's Case.

8. The Plaintiff declares in *Trespass* in one Acre, and abuts it, the Jury find him guilty in *dimidio Acre predict'*, this is good; but if it were in *Ejectione*, the Verdict had been ill; for it is not certain in what Part the Plaintiff shall have his *Habere fac' Possessionem*, Yelv. 114.

*Note.*  
*Ejectione* and  
*Trespass* for  
Battery, both  
one Writ.

*Ejectione Firme* and *Trespass* of Battery were both in one Writ, and upon Not guilty, Verdict was given for the Plaintiff, both for the *Ejectment* and for the *Battery*, and entire Damages. Q. of the Judgment: For the Damages for the *Battery* could not be released, because they were entire with the *Ejectment*. Hob. 249. Bird and Snell.

*Ejectione Firme* against a Baron and Feme, which are but one Person in Law, yet if the Baron dies, the Suit shall proceed against the Wife; for it is in the Nature of a *Trespass*. Hardr. 161.

### Of the Difference between *Ejectione Firme*, and *Quare ejecit infra Terminum*.

*Ejectione Firme* lies against the immediate Ejector; but *Quare ejecit* lies against him who has Title, as against him in Reversion. 7 H. 4. 6. b.

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*Ejectione Firme* is *Vi & Armis*, the other is not.

*Quare ejicit infra Terminum* lies against him who is in by Title, as against the Vendee of the Lessor; but *Ejectione Firme* is against him that is the wrong Doer.

In *Ejectione Firme*, if the Term expire hanging the Action, this shall not abate the Writ, but the Plaintiff shall have Judgment for his Damages. *Aliter in Quare ejicit infra Terminum.*

Note, No *Ejectione Firme* was brought against a Stranger before 14 H. 7.

At Common Law the Lessee had no Action but of Covenant against his Lessor, or *Ejectione Firme*. The *Quare ejicit infra Terminum* is given by the Stat. W. 2. c. 24. for Recovery of his Term against the Feoffee; for *Ejectione Firme* lies not against him, because he came to the Land by Title of Feoffment, and not by *Tort*. *Vaughan* 127.

In what Court this Action is to be brought, or not, and of Removal by Procedendo to an Inferior Court.

It lies in *Banco Regis* and *Banco Communi*.

It lies in the *Exchequer*, and for a Party privileged by Bill. 1 Rep. 3. *Pelham's Case*.

Note, Where the King's Revenue is concerned, the Ejectment ought to be brought in the *Exchequer*, as if a Man claims Title to *In the Exchequer* Lands of a Person outlawed. *Ejectione Firme quer*. was brought in the *Exchequer* by *Garroway* against R. T. upon an Ejectment of Lands in *Wales*,

*Wales*, and it was maintainable as well as Intrusion on Lands in *Wales* upon the King himself.

Upon *Ejectment* brought in the Court of Common-Pleas by the Defendant in the *Exchequer*, the Plaintiff moved that the Action might be laid in the *Exchequer*, because his Title was under an Extent out of this Court for Debts in Aid; and so it was ordered, *Hardr. p. 193. Sir Ralph Banks and Sir Tho. Bennet. Hardr. p. 176. Hammond's Case. Godb. I. 296. Case 416.*

This Action lies not in the *Marshalsea*, *10 Rep. 72.*

It lies in the Court of Ancient Demesne, if it be of Ancient Demesne Lands, and not in the King's Courts; and therefore in *Ejectione Firme* brought above, Ancient Demesne is a good Plea. *Vid. infra, Tit. Pleading, 5 Rep. 105. Alden's Case.*

How Ejectment lies in Ancient Demesne.

After a special Verdict found in C. B. the Plaintiff may bring a new Ejectment in B. R. *aliter* of the Defendant.

Ejectment will not lie of Land in *Jamaica*, and why.

*Ejectione Firme* depends in B. C. and a special Verdict is found. The Plaintiff may bring a new Ejectment in the King's-Bench, and it shall not abate, for it's no Inconvenience to any Person, the same being Plaintiff here and there; but if the Verdict had been for the Defendant in the Common Bench, then the Plaintiff cannot bring a new Action in B. R. till Possession be given in *Banco Communi* according to the Verdict, *Tr. 17 Car. 2. B. R. Shepard and Griffith.*

By *Twisden* in *Crisp and Jackson's Case*, the Reason why Ejectment will not lie of Lands in *Jamaica*, or in any of the King's Foreign Territories, was, because the Courts here

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here could not command them to do Execution there, for they have no Sheriffs, *i Ventr.*

p. 59.

*Tr. 14 Car. 2.* It was ordered in *B. R.* That in every Action of Trespass and Ejectment to be brought after that Time in the King's-Bench, if the Land did lie in the County of Middlesex, then a Bill of Middlesex should be brought; and if the Lands lay in London, then a Writ of *Latitat* should be taken out against the casual Ejector, named Defendant in every such Action.

How Ejectments to be brought, if the Lands lie in Middlesex or London.

Not removable by a *Procedendo* to a Franchise.

If *Ejectione Firme* be removed from an Inferior Court by *Habeas Corpus* into the King's-Bench, it is not removable by *Procedendo* to a Franchise, as *Oxon*, *Pole*, *Canterbury*, &c. which only hold Plea of personal Actions; but in this Action he shall recover Possession, and have a Writ of *Habere fac<sup>2</sup> Possessionem*, and thereby he that hath a Freehold may be put out of Possession. And in *Sabin's Case*, *M. 13 Car. 2.* *B. R. Ejectione Firme* was brought in the City and County of *Canterbury*, and removed into the King's-Bench by *Habeas Corpus*, and a *Procedendo* was prayed; but because Bail was put in in *B. R.* the Court denied the *Procedendo*, because they were thereby seised of the Cause, *Cro. Car. 87. Halley's Case. M. 13 Car. 2. B. R. Sabin's Case. Siderfin, p. 231.*

*Procedendo* denied, because Bail was put in *B. R.*

Now in such Cases of Franchises, as *Canterbury*, *Oxon*, the *Cinque Ports*, &c. they suppose the Lease elsewhere in the County, and it shall be tried where it's supposed the Lease to be made; and so by *Wild* in *Sabin's Case*. Upon Ejectment in the County of *Canter-*

To be tried where it's supposed the Lease is made.

C bury,

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Canterbury.

bury, one may declare upon a Demise in any Part of the County of Kent, and so try it at Maidstone; for the *Venire* comes always from the Place of the Demise, which was denied by Windham, the Body of the County being as another County from that of Canterbury.

But the Reason why the Court denied a *Procedendo* in *Allen and Burney's Case*, was because the Plaintiff below had not actually sealed a Lease, as he ought to have done, being an Inferior Court, *M. 18 Car. 2. B. R. Allen and Burney.*

Marches of  
Wales.

Action was brought in the Court of the Marches of Wales in Nature of *Ejectione Firme*, and a Prohibition granted, because they are not to meddle with the Possessions of Men, unless in respect of Force, *plena Curia, 2 Rolls Rep. 309.*

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C H A P.

## C H A P. II.

*Who shall have Ejectione Firme, and in what Cases this Action lies, or not, in respect of Possession, in respect of Entry congeable, in respect of Exility of Estate. By Lessee of Copybold, and how, and whether before Admittance, and the Manner of Declaring. Of Ejectment by Executors. Infant-Lessee of Simonist. On Elegit. On undue Extent, and in case of holding over. By Intruder, by the King's Lessee, by a Person outlawed, by Lessee of Bail on Extent, by Judgment against the Principal, by Issue in Tail liable to a Statute, who comes not in and pleads to the Sci' fac', on Entry if the Grantee of Rent with Proviso for Retainer till Satisfaction of Arrears; by Cestuy que Trust; by Vendee of Commissioners of Bankrupt. Two Tenants in Common to make several Leases in Ejectment.*

THE next to be handled, is, In what Cases this Action lies, and in what not; whereby the Reader may be so well informed, as not to hazard his Client's Cause, and his own Reputation.

Note, If the Heir bring an Ejectment, and the Ancestor dies subsequent to the Action, he shall not recover, because every one shall recover only according to the Right which he hath at the Time of the bringing his Action, in Wedywood and Bayley's Case, Raym. 463.

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In respect of Possession.

It has been laid down for a constant Rule in our Books, That upon a Possession in Law, a Man shall never maintain an *Ejectione Firme*, but he ought to have actual Possession at the Time of the Ouster, as if Tenant for Years makes a Lease at Will, and the Tenant at Will is ejected; the Question was in *Stone and Grubham's Case*, 1 *Rolls Rep.* 3. if the Tenant for Years for this Ejectment of his Lessee at Will shall have an *Ejectione Firme*, and it was resolved that he should not. So if Lessee for Years be the Remainder for Years, the Lessee for Years is ousted, his Term expires, he in Remainder for Years cannot have an *Ejectione Firme*, because he had no actual Possession at the Time of the Ejectment. So if a Lease for Years be made, and before the Lessee enters, a Stranger enters, he shall not have this Action. And upon this Reason of Law it is, that by the new Rule of Practice, the Defendant shall confess Entry and Ouster; but it has been resolved, That if Inquisition upon *Elegit* be found, the Party before Entry hath the Possession, and a Fine with Nonclaim shall bar his Right; for before actual Entry he may have *Ejectione Firme* or *Trespass*, and it is not like to an *Interest Termini*.

In *Smith and Rawlin's Case* no Entry was proved to be by Dean and Chapter since 1631; yet in regard Rent had been actually paid, there the Lessee may bring Ejectment (without any Lease actually sealed on the Ground), 2 *Keb.* 127. *Smith and Rawlins.*

A Corporation of Mayor and Aldermen are Lessors in Ejectment, and the Demise in the

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the Declaration is not mentioned to be by Deed, it was assigned for Error; but being after a Verdict, the Court would not allow it. *Patrick Ball, 8° W.*

Possession of the Lessor of the Plaintiff must appear to be within Twenty Years, though the special Verdict be on another Point; so *Keb. 364.* but *32 H. 8. c. 2.* extends not to Common; but the Reversion in the King will Privilege the Lessor of the Plaintiff being but a Lessee for Ninety nine Years against such Want of Possession, *3 Keb. 681. Mic. 28 Car. 2. B. R. Piggot* and the *Lord Salisbury.*

Lessee for Years shall only have this Action, *N. B. 120. F.*

He whose Entry is not congeable by Law, In respect of cannot have *Ejectione Firme*, as in case of Entry con-  
a Formedon in Remainder and Discontinu-  
ance. geable.

Lessor grants the Reversion to *A.* Lessee attorns, *A.* ousts him, Lessee shall have *Eje-  
ctione Firme*, *N. B. 221. a. 1 H. 5. 3. pl. 3.*

The Action of Ejectment is maintainable, if it appear by special Verdict, that any former Lease made by the Lessor, *que, &c.* be in Force, *1 Rep. 153. Rector of Chedington's  
Cafe.*

How Copyholder or his Lessee shall bring Ejectment by an Ejectment, there have been uncertain Op-  
nions in our Books; but the Law therein stands thus:

Lessee of a Copyholder for one Year shall maintain *Ejectione Firme*, in as much as his Term is warranted by the Law, by Force of the general Custom of the Realm; and it's

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but Reason, if he be ejected, that he shall have an *Ejectione Firme*; and it's a speedy Course for a Copyholder to have Possession of the Land against a Stranger; but in the Guardian of the Monastery of Osterley's Case cited, it was objected, That if Ejectment be maintainable by Lessee of a Copyholder (as it was adjudged in B. C.) then if the Plaintiff recover, he should have an *Habere fac' Possessionem*, and then Copyholds should be ordered by the Common Law, 4 Rep. 26. Cr. Eliz. 676, 717. Eriske's Case. Moor 709. Stoner and Gibson. Leon. p. 118.

¶ Leon. p. 18.  
By Lessee of  
a Copyholder  
without Li-  
cence of the  
Lord.

The Lessor for Years of a Copyhold which is made without Licence of the Lord, may maintain an *Ejectione Firme*, because he is Lessee against all but the Lord; and the Lease is good between the Lessor and Lessee, and against all Strangers, but not against the Lord; and so in Hardres's Rep. p 330. The Lease of a Guardian or Copyholder will maintain the Declaration in Ejectment, though void, against the Lord and Infant. And therefore Jackson and Neale's Case, in Cro. El. 394. seems not to be Law, which was; The Licence to a Copyholder was to let for Twenty one Years from Michaelmas last past, he makes a Lease for Twenty one Years, to begin at Christmas following, to the Plaintiff, who entred, and being ousted by the Defendant, brings an *Ejectione Firme*; the Court was of Opinion, That the Lease not being warranted by this Licence, no *Ejectione Firme* lies upon it.

Copy.

Copyholder makes a Lease for Three Years without Licence, this is not good for Lessee to maintain *Eject. Firme* against a Stranger, *per Cur'*, in Lady *Ashfield's Case*, -- *Car. B. R.* and in *Gowen and Longhurst's Case*, *M. 38 & 39 El. in Scaccio'*.

But in *Petty and Evans's Case*, in *Ejectione Firme* brought by the Lessee of a Copyholder, it is sufficient that a Count be general without Mention of the Licence ; and if the Defendant plead Not guilty, then the Defendant ought to shew the Licence in Evidence ; but if the Defendant plead specially (as in those Times it was usual) then the Plaintiff ought to plead the Licence certainly in the Replication, and the Time and Place when and where it was made. *2 Brownl. 40. Petty and Evans.*

In *Ewer and Astwick's Case* it was doubted by the Court, (and so in several other Cases in former Times) Whether the Plaintiff in his Declaration ought to set forth the Custom of the Manor, that the Copyholder may Lease, &c. and then to shew that the Lease is warranted by the Custom. But now it's fully agreed, That the Plaintiff ought not to shew that the Lease is warranted by the Custom ; but that shall come on the other Side, and so is the Practice not to declare on the Custom, *Rumney and Eve's Case*, *1 Leon. p. 100.*

It has likewise been a Question, Whether one ought to be admitted before he can maintain this Action ; but it is resolved in *Rumney and Eve's Case*, if customary Lands do descend to the younger Son by Custom, and he enters and leaseth it to another, who takes the

Declaration  
by Copyhold-  
er in Eject-  
ment.

Copyholder  
in his Decla-  
ration need  
not set forth  
the Custom.

*Ejectione Firme*  
by Copyhold-  
er before Ad-  
mittance or  
Presentment,  
and where  
not without  
Admittance.

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Profits, and after is ejected, that he shall have an *Ejectione Firme*, without any Admittance of the Lessor, or without any Presentment that he is Heir, 1 Leon. p. 101. Rumney and Eves, Pop. 38. Bullock and Dibler.

**Copyholder  
Mortgagee  
must be ad-  
mitted before  
he brings this  
Action.**

**By Executors.**

But a Copyholder Mortgagee must be admitted before he bring this Action, and he may bring his Bill against the Lord to be admitted to inable him to try the Custom, 2 Keb. 357. Tawell and Cornish.

**By Executors.** *Ejectione Firme* may be brought by Executors of Land let to their Testator for Years upon Ouster of the Testator for Years, per Stat. 4 Ed. 4. c. 6. which gives an Action for Goods taken out of the Possession of the Testator; the Reason is, because it is to recover the Term it self, 7 H. 4. 6. b. 2 Ventr. p. 30.

If a Man ousts the Executors of his Lessee for Years of their Term, they may have a special Action on the Case, or they may have *Ejectione Firme* or *Trespass*, 4 Rep. 95. a. Reg. 97. N. B. 92.

**By Infant.**

In Ejectment the Plaintiff was an Infant at the Time of the Bill purchased, and sued by Attorney where he could not make an Attorney, but ought to have sued by Guardian; per Cur' it's erroneous, and *Error en fait*, Cro. Jac. p. 5. Rew and Long.

**By Symonist.**

Deprivation in the Spiritual Court for Symony, disables from bringing Ejectment, because he can make no Lease, per H. Windham, Bucks Lent. Assises, 1668. Dr. Crawley's Case.

In

In *Jefferson* and *Dawson's Case*, Council pray'd, That Delivery of Possession might be awarded on *Elegit*, but the Court denied it, the Party having no Day to interplead; and the Sheriff ought only to deliver Seizure to enable the Plaintiff to maintain Ejectment, and the Tenant may plead on the Ejectment, or else the Tenant may be turned out unheard, and so be remediless, and *per Cur'* actual Possession ought not to be delivered; but if it be, it's remediless; and yet before Entry the Plaintiff for whom the Inquisition is found, has Possession, and before actual Entry he may have *Ejectione Firme*, and is not like to an *Interesse Termini*, *M. 25 Car. 2.*

*B. R.*

In some Cases, Remedy against an undue Extent may be by Ejectment; as, The Inquest by Practice of the Sheriff on *Elegit*, find the Defendant had Lands in *A*, where he had nothing, and so extended all his Lands in *B*, as a Moiety; this is avoidable by Ejectment, as to a Moiety, and the Evidence may be, That the Defendant had nothing in *A*, or to file the Writ of *Elegit*, and in Ejectment thereon (which else cannot be brought) to plead the same; or in case of holding over, Ejectment lies against Tenant by *Elegit*, if he be satisfied at the extended Value, *contra* of a Judgment which is uncertain for Costs and Damages, *1 Keb. 891. Dakin and Hulme.* *Keb. 858. Lord Stamford and Hubbard.*

*Ejectione Firme*  
be for actual  
Entry on *Ele-*  
*git.*

*Ejectment*  
against *Ten-*  
*nant by Elegit*  
in case of  
holding over,  
not so of a  
Judgment,  
and why.

By Intuder.

Intruder on the King's Possession cannot make a Lease, whereupon the Lessee may maintain an *Ejectione Firme*, tho' he may have an Action of Trespass against a Stranger, but

Stranger may but a Judgment in Information of Intrusion enter notwithstanding Judgment in Informat' in Intrusion.  
Judgment in Intrusion, what.

*pro Rege* binds not a Stranger, but that he may enter and bring Ejectment; if it were otherwise, this would be a Trap for any Man's Possession by lawful Title; and the Judgment on Intrusion is not in the Nature of Seisin or Possession, but only *quod pars committatur & capiatur pro fine*, and an Entry may be made by the King's Patenttee, *Hardress*, p. 460. Friend and the Duke of Richmond.

If a Stranger entreth upon the King's Fermor, by such Entry he hath gained the Estate for Years; and if he doth make a Lease to another, his Lessee may maintain *Ejectione Firme*. A Lessee may have *Ejectione Firme*, tho' the Reversion be in the King. So that it seems the Ejector by his Entry hath gained the Land, 2 H. 6. 6. Dyer 116. b. 3 Leon. p. 206.

The Lessee of the King.

The Lessee of the King may bring *Ejectione Firme*, tho' the King be not put out of the Freehold by the Words, *He entred and expulsed him*, Cr. El. 331. Lee and Morris.

By Tenant in Common of one Moiety.

It's said in Leonard, 1 part 212. Lessee of Tenant in Common of one Moiety, without actual Ouster, cannot maintain *Ejectione Firme* against the Lessee of his Companion, as by driving out of his Cattle, &c. 1 Inst. 199. b.

Entry taken away by Lapse of Time for not entring.

It was held in Moor and Furden's Case, That Two Tenants in Common, Lessors, must make several Leases in Ejectment. *Showre* 342. J. M. covenants to stand seised to the Use of himself for Life, and after to the Use of his Daughters, until every one of them successively shall or may have levied 500l. Remainder to his eldest Son. He had Four Daughters

Daughters at the Time of his Death, and the Land was worth 100*l.* per *Annum*; the Father died in 30 El. the eldest Son immediately entred, the eldest Daughter entred in 42 Eliz. and made the Lease to the Plaintiff; *Per Cur'*, she hath overpast her Time, and cannot enter; for then she should prejudice her other Sisters, so as they should never levy their Portions, Cr. El. 809. *Blackbourn and Lassells.*

A Person outlawed may bring *Ejectione Firmae* By a Person outlawed. For tho' a Person outlawed cannot after an Extent prevent or avoid the King's Title by Alienation, yet the Outlawry gives no Privilege to the Possession of a Disseisor, but that the Disseisee may enter and bring the Ejectment; for by the Outlawry the King hath only a Title to the Profits, and no Interest in the Land, Hardr. 156. *Hammond's Case vide.*

If a Man ousts the Executors of his Lessee By Executors. for Years of their Term, they may have a special Action on the Case, or they may have an *Ejectione Firmae* or *Trespass*, 4 Rep. 95. a. Reg. 97. N. B. 92.

One seised of Lands in Fee-Simple, be- The Baillets comes Bail in an Action of Debt in *B. R.* Lands to *B.* and after Issue joined, let the Land to *B.* Judgment is the Plaintiff; Judgment is afterwards given Principal, and against the Principal, and an Extent taken Extent on the upon the said leased Lands, *B.* the Plaintiff Lands leased, being thereupon ousted, brings this Action of *B. brings Ejectment.* *Ejectione Firmae*, Crok. *Jac.* 449. *Kervile and Brokeft.*

Tenant

Where the Issue in Tail is liable to Execution on a Stat. on Sci' fat' returned, and he comes not in and pleads, he shall not bring his Ejectment.

Upon Entry of Grantee of a Rent and Retainer till Satisfaction for Arrear, he may upon such Interest quoisq; maintain an Ejectment; and so the Lord upon S:ifure of a Copyhold till the Heir come to be admitted.

<sup>1</sup> Keb. 287. in Pateson's Case.

Tenant for Life, Remainder to his Issue in Tail ; Tenant for Life enters into a Stat' and dies, Conisee sues a *Scire fac'* against his Heir, who was Issue in Tail, and the Sheriff returns *Scire feci*; and upon this, Execution without any Plea pleaded by the Heir, and the Heir being ousted by the Execution, brought *Ejectione: Per Cur'*, the Heir shall be bound by this Execution, and he has no Remedy, neither by Ejectment, Writ of Error, nor by *Aud' Querela*, nor by any other Way, but against the Sheriff, if he have made a *faux Return* of the *Scire fac'*, *Siderfin*, p. 55. *Day and Guilford*.

Rent granted with a Proviso, that if it be Arrear the Grantee may enter and retain until he be satisfied. This Proviso shall enure to grant a certain Estate to the Grantee when he enters for Non-payment. And tho' the Grantee by such Entry cannot gain a Freehold, yet he had such an Interest as he may make a Lease of it, and his Lessee may have an Ejectment; for the Law does not give an Interest to any, but it also gives a Remedy for it; and if he have Remedy to hold such Possession, he ought to have this Action, which is the lowest Degree of gaining Possession. So in the Countess of Cumberland's Case, Anno 1659. of Copyholds, there was a Custom, That if such Tenant who claims Tenant Right does not pay his Fine, the Lord may enter and retain the Land until he be satisfied, and adjudged that his Lessee upon such Entry for Non-payment may maintain *Ejectione Firme*, *Siderfin*, p. 223. *Jemot*

## The Law of Ejectments.

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Jemot and Cowley. 1 Roll. 784. 2 Keb. 20.  
Mesme Case. Cro. Jac. 5:1. Havergell and  
Hare.

Hill. 13 Jac. B. C. Rot. 868. Brown and  
Hagger cited in Price and Vaughan's Case, is  
full in the Point; and Trin. 14 Car. 2. Roll.  
2511. Eyer and Malin. Ejectment upon a  
Lease of the Lord Byron, special Verdict  
found, Sir J. Byron seised in Fee by Inden-  
ture, grants a Rent-Charge for Life, to com-  
mence after the Death of the Grantor; and  
if the Rent be Arrear, that the Grantee may  
enter and take the Profits without Account,  
till the Rent and Arrears shall be paid. The  
Rent was Arrear, and the Grantee enters and  
makes a Lease to the Plaintiff; and Bridgman  
and the rest (*præter Browne*) agreed for the  
Plaintiff.

It was said in the Case of Holmes and Bayly, By Tenant at  
That Tenant at Will may make a Lease for Will.  
Years to try a Title of Land, and so may a  
Copyholder, Stiles Rep. 380.

Ejectment is brought by *Cestuy que Trust*. By *Cestuy que*  
Now if the Trustee of the Lease be Lessor *Trust*.  
in Ejectment, he may disclaim *in Pais* (if he  
have not accepted the Trust) which will avoid  
the Plaintiff's Title at the Trial; 2 Keb. 794.  
Cobek and Lisle.

Vendee of the Commissioners on the Statute of Bankrupts of Lands by Deed in-  
dented, cannot maintain by his Lessee an *Ejectione Firme* before Inrolment of the  
Deed, altho' it be introlled after the Action  
brought: And the Difference between this  
and the Case of a common Bargain and Sale,

per

## The Law of Ejectments.

*per Stat. 27 H. 8. c. 10. of Uses,* is, For there the Estate passeth by the Contract, and the Use is executed by the Statute; then comes the Act of Inrolments of the same Year, and enacts, That no Estate shall pass without Inrolment, and this within Six Months. But the Commissioners here have not any Estate, but only a Power which ought to be executed by the Means prescribed by the Statute, with the Circumstances there directed, which is not only by Deed indent-ed, but inrolled also; Sir Tho. Jones, p. 196. *Perry and Bowers.*

By Baron and  
Feme.

*Baron and Feme Lessors in Ejectment,* and do not say by Deed, yet good. 2 Rep. 61. b. 3 Rep. 216.

*Note,* Lessor of Tenant in Possession hath no Privilege in Ejectment, tho' he be a Lord of Parliament, unless he be Tenant in Posses-sion himself, 1 Keb. 329.

## C H A P. III.

Of Process in Ejectione Firme. The Original. What Mistakes in the Original are Error after a Verdict, or not. Of a vicious Original. If Original in Ejectment be Summone, as it's Error. Of the Want of an Original. Of an Original taken out before the Cause of Action. Where Amendment shall be by the Paper-Book. Of Amendments of Originals, Stat. 13 Car. 2. c. II. Of Appearance. Of common Bail. Infant, how to appear, sue, or defend. The true Difference between Guardian and Prochein Amy. Of want of Pledges. Of Bail. Of the Stat. 13 Car. 2. c. 2. Of Bail or Error. When the Suit is in B. R. by Original, Error doth not lie upon it but in Parliament. The Form of a Precipe to, an Original in B. R.

The Original thus:

R E X, Ec. Vice Midd salutem. Si  
A. B. fecerit te securum tunc  
pone p vad & salvos pleg C. D. nu-  
per de London Gener. Ita qd sit co-  
tam Justiciariis nostr apud Westm  
(tali die) ad respondend W. J. de  
plito quare vi & armis unum Messuag  
decem Acres terre & tres Acres Pa-  
ture cum ptined in D. in Comie tuo  
que S. W. vid eid W. dimisit ad ter-  
minum qui nondum preteriit intravit  
E

## The Law of Ejectments.

*E* ipsum a firma sua ejicit, *E* alia enormia ei intulit ad grave damnum ipsius W. *E* contra pacem nostram *E* Dom regis nunc, &c. &c. &c.

On the Return in *B.R. Quinden' Pasche*  
*ubicunque.*

### *Writ, Process.*

In Ejectment upon a Demise by the Lord L. who was no Peer; yet upon Non Culp' good, he being the same Person that did demise. *Allen* 58. *Bernard's Case.*

So you see the Original Writ in C. B. in Ejectment, is an Attachment, or a *Pone per vadlos & salvos plegios, &c.* and *Summonitus* in Ejectment was held to be an Error.

In *Ejectione Firme* brought by Original Writ out of Chancery, the Record upon the Issue-Roll was enter'd in this Manner: *S. Simo Edulph nuper de C. summonit fuit ad respond Tho. R. de plito quare vi & armis, &c.* And after Verdict *pro Quer'* it was moved, That this was a vicious Original, and not aided by any of the Statutes of *Jeofails*; for it appears by the Entiy of it, that the Original was a Summons, where it ought to have been an Attachment, which the Court granted: But

*Aliter, if there be no Original.* upon Search there was no Original filed; and then *per Cur'*, seeing there is no Original filed, it shall be intended after Verdict, that once there was a good Original, which is now lost, and that the Plaintiff's Clerk had mistaken in the Recital of it,

which after Verdict is not material. *Reg.*  
*Orig.* 227. b. *Saunders Rep.* 1. p. 317. *Redman*  
*and Edolph, Sider.* 423. *mesme Case,* 2 *Keb.* 54+.  
*mesme Case.*

So in *Jennings and Downes's Case*, Error was assigned, because that it appeared by the Record that the Declaration was before the Plaintiff had any Cause of Action: But the Council of the other Side said, There is a wrong Original certified, and prayed to have a new Certificate to have the true Original certified. *Per Cur'*, Take it, for it is in Affirmance of a Judgment, which ought to be favoured. But in *Jobs and Steyner's Case* the Original bore Date 24 Junii, 6 Car. and the Ejectment is supposed 31 Januarii. *Per Cur'*, It's Error, because the Original (upon Diminution alledged) was certified as an Original in this Action, which is between the same Parties, and of the same Land, and of the same Term; and being taken out before the Cause of Action, it's a vicious Original, and not aided by any Statute. *Stiles Rep.* 352. *Jennings and Downes, Cro.* Car. 272, 281. *Jobs and Steyner.*

Original taken out before the Cause of Action, is Error.

The Original in Ejectment was *Summoneas*, whereas in Trespass, as this is, Summons lies not, but Attachment; this is as no Original, and the Declaration is not here against the Defendant as one in Custody, without one of which the Court cannot hold Pleas and Judgment was arrested. *Sid.* 425.

When Suit in Ejectment is in *B. R.* per Original, Error doth not lie upon this, but in Parliament. *Id. ibid.*

*Original in B. R.*

The *Præcipe* to an *Original in Ejectione Firme* must be in this Manner:

Midd' ss. Si A. B. fec<sup>t</sup>, &c. tunc pone  
 C. D. nuper de I. in Com<sup>d</sup> tuo gen  
 de plito quare vi & armis quatuor  
 Messuag cum pti<sup>m</sup> in I. que B. I.  
 prefat A. dimisit ad terminum qui  
 nondum preterit intravit & ipsum a  
 firma sua predict' ejecit & alia enormia  
 ei intulit ad grave damnum ipsius  
 A. & contra pacem nostram O<sup>r</sup>g in  
 ret in B. N. (Quindena Pasche) ubicun  
 que, &c.

A. N. Atto<sup>n</sup> Quer.

It's a Rule in the Register, That in the Writ of *Ejectione Firme* there may not be *Bona & Catalla*, because that for Goods ta  
 ken away a Man shall have an *Exigend'*, and in this Writ Distress infinite. Pl. 228. b.

So was *Johnson and Davies's Case*. The Suit was by *Original Writ*, which is of one Messuage, Sixty Acres of Land, Three hundred Acres of Pasture; but *per Curiam*, this shall not be intended the *Original* upon which the Plaintiff declared, but that there was another *Original* which warranted the Declaration, which is now imbezelled; and this Want is aided by the Statute of *Feofails*, especially as this Case is, because the Writ is *Teste 18 Apr' Ret' 15. Pasch'*, &c. This Declaration is in *Trinity Term*, and here is no Con:

Continuance upon this Writ. Cro. Car. 327.

Johnson and Davies.

In *Ejectione Firme* the Paper-Book was right, *scil. Acram Terræ*, and the Bill upon the File was ill, (*scilicet*) *Clausum Terræ*, and the Bill was amended by the Paper-Book; and the Difference is, where there is a Paper-Book in the Office of the Clerk, this being right, all shall be amended by it; but if there were not any Paper-Book, and the Bill upon the File is ill, there can be no Amendment; and in this Case the Amendment was according to the Paper-Book which was in the Hands of the Plaintiff's Attorney. Palmer 404, 405. Todman and Ward.

It was an Exception in *Haines and Strowder's Case*, because the Suit was by Original Writ, and the Clause (*Ostensurus*) was not in the Writ. Palmer 413. *Haines and Strowder*, Godb. 408 *Case*, *Crouch and Haines*, *Case* 488.

The Original was *Teste* the same Day *Original Testis* that the Ejectment was made, and adjudged the same Day good *per totam Curiam*. 2 Rolls Rep. 352, 129. of Ejectment. Beaumont and Coke.

As for the Amendment of Originals in *Of Amendments of Ejectione Firme*, there are many Cases in our Books; I shall name one or two which may be as a Guide in others.

*Ex divisione* for *ex dimissione* was amended, so *Barnabiam* for *Barnabam*, and so what appears to be the Default of the Cursitor. 1 Brownl. 130. 1 Rolls Abr. 198.

## The Law of Ejectments.

If the Paper-Book be perfect, tho' the Bill upon the File be not perfect, yet it's amendable after Verdict.

In *Ejectione Firme*, if the Bill be not perfect, but Spaces left for Quantity of Land and Meadow, and after the Paper-Book given to the Party is made perfect, and the Plea-Roll, and *Nisi-prius* Roll, but the Bill upon the File was never perfected, and after a Verdict is given for the Plaintiff, this Imperfection of the Bill shall be amended, because the Party is not deceived by this; forasmuch as the Paper-Book which he had was perfect, and it was the Neglect of the Clerk not to amend the Bill when the Party had given him Information of the Quantity.

*1 Rolls Abr. 207. Leeson and West.*

Original in Ejectment was amended after Writ of Error brought, as *divisit* for *dimitit*.

*2 Ventr. 173.*

By the Stat. 13 Car. 2. c. 11. in all personal Actions, and in *Ejectione Firme* for Lands, &c. depending by original Writ, after any Issue therein joined, and also after any Judgment therein had and obtained, there shall not need to be Fifteen Days between the *Teste-day*, and the Day of Return of any Writ of *Ven' fac'*, *Hab' corpora jurat'*, *Distringas jurat'*, *Fieri facias*, or *Capias ad Satisfaciend'*, and the Want of Fifteen Days between the *Teste-day* and the Day of Return of any such Writ, shall not be assigned for Error.

If an Original in *B. R.* be ill, Error upon it lies not but in Parliament. *Sid. p. 42.*

Action of Ejectment, and also Battery in one Writ; and it was moved in Arrest of Judgment, because Battery was joined in Ejectment, the Damages were found severally,

# The Law of Ejectments.

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ly, and the Plaintiff released the Damages for the Battery, and prayed Judgment for the Ejectment, and had it. 1 Brownl. 235.  
*Bide and Snelling.*

In Trin. 14 Car. 2. it was ordered by B. R. Where a Bill That in every Action of Trespass and Ejectment to be brought in that Court, if the Lands lay in the County of Middlesex, then a Bill of Middlesex should go forth; and if the Lands lay out of the County of Middlesex, then a Writ of *Latitat* should be taken out against the casual Ejector, named Defendant in every such Action.

And that common Bail should be filed for Common Bail. Such Defendant, before any Declaration by Bill in such Action shall be delivered to any Tenant in Possession of the Lands in such Declaration specified; and that if the Attorney for the Plaintiff should fail in the Performance thereof, then no Judgment shall be enter'd for the Plaintiff against the casual Ejector; nor shall the Tenant in Possession confess Lease, Entry and Ouster of the Tenants in such Declaration, mentioned at the Trial of the Issue between the Parties aforesaid.

## Of Appearance.

If the Tenant in Possession do not appear in due Time after the Declaration left with him, and enter into the Rule for confessing Lease, Entry and Ouster, then upon *Affidavit* made of the Service thereof, and Notice given him to appear, upon Motion the

D 3

Court

Judgment  
against the  
casual Ejector  
for want of  
Appearance.

## The Law of Ejectments.

Court will order Judgment to be enter'd up against the casual Ejector.

In Ejectment of any other personal Action, if the Defendant do appear upon the first first Return in *Hillary* or *Trinity* Term, there can be no Imparlane without Consent, or special Rule of Court.

Infant, how to appear.

In Actions real and mix'd against an Infant, he ought to appear by Guardian, and not by Attorney; and Judgment in *Ejectione Firme in Banco* against the Infant Defendant, upon a Verdict had against him, was reversed for this Cause. *1 Rolls Abr. 287. Lewis and Johns.*

Infant, how to sue or defend.

The Difference between Guardian and Prochein Amy.

*Ejectione Firme* was brought against *Tho. mas* the Father, and *J. the Son*; the Father appeared by *T. C. Attornat' suum*, and the said *J. per eundem T. C. proximum amicum suum*, who was admitted *per Cur' ad prosecuend'*, this is Error: A Guardian and *Prochein Amy* are distinct, and a Guardian or *Prochein Amy* may be admitted for the Plaintiff. And a *Prochein Amy* is appointed by *W. 1. c. 47. W. 2. c. 15.* in Case of Necessity, where an Infant is to sue his Guardian, or that the Guardian will not sue for him; and therefore he is admitted to sue *per Guardian* or *Prochein Amy*, where he is to demand or gain; but when he is to defend a Suit in Actions real or personal, it always ought to be *per Guardianum*, and the Guardian ought to be admitted *per Cur'*. Therefore the Defendant ought always to appear by Guardian, and not by *Prochein Amy*; and also to admit the Defendant *ad prosecuend'*, is ill,

ill, and preposterous. *Cro. Jac. 64<sup>o</sup>. Maby and Shepard.*

## Pledges.

Error of a Judgment in C. B. in *Ejectione Pledges not Firme assigned in 1 Cro. 91, 594.* in not assigned for certifying Pledges (on Diminution alledged) Error, because in a Writ of Error, for that Cause *per Curia*, Diminution Omission of Pledges, or of one, is Error was not pray- though after a Verdict; and the Defendant ed. after *in nullo est Erratum* pleaded may pray Diminution, which cannot be granted but on Motion, and then only to affirm the Judgment; yet when the Record is come in, it may be made use of to avoid the Judgment; and because Diminution was not prayed, the Court conceived it cannot be assigned for Error. *1 Keb. 278, 281. Hodges's Case.*

## Bail.

In Ejectment against Two, one does not put in Bail, it is Error. *2 Rolls Abr. 46. Dennis's Case.*

In Ejectment on *Non Culp'* pleaded by the Attorney for the Defendant, Verdict was for the Plaintiff, who had Judgment, and Error was brought to reverse it, because no Bail was put in for the Defendant; yet the Attorney being once retained by Warrant to put in Bail, and took his Fee, and being but common Bail, though the Attorney was dead, yet the Bail was then enter'd, as of the same

Common Bail  
enter'd after  
the Attorney  
was dead.

## The Law of Ejectments.

Term it ought to have been done. 3 Bulst. 181.  
*Denham and Comber.*

Stat. 13 Car. 2.  
c. 2.

Trespass is within the Act of 21 *Jac.* which names Trespass generally, but Ejectment is not within that Act. Stat. 13 Car. 2. c. 2. orders Bail on Error in Trespass. 1 *Keb.* 295. *Power's Case.*

*Note.*, Error without Bail is a *Supersedeas* in Ejectment, notwithstanding the new Act, 13 Car. 2. c. 2. it being not within the general Word [Trespass]. *Id. p. 308. Lufton and Johnson.*

When common  
Bail to  
be filed.

Tr. 14 Car. 2. B. R. Ordered, That common Bail shall be filed for the Defendant, before any Declaration by Bill in such Action shall be delivered to the Tenant in Possession of the Lands in such Declaration contained; and that if the Attorney for the Plaintiff in B. R. shall fail thereof, then no Judgment for the Plaintiff shall be enter'd against the easual Ejector, nor shall the Tenant in Possession confess Lease, Entry and Ouster at the Trial.

Imparlace.

Attorney was made Lessee in Ejectment, and he wold not grant an Imparlace to the Defendant, as the Course is, because he is Attorney of this Court (B. R.), and so claims Privilege that the Defendant may answer him this Term, or else he will enter up Judgment against him for want of a Plea. *Quære. Stiles Rep. 367.*

## C H A P. IV.

Against whom Ejectione Firme lies, or not; and of the casual Ejector. Of the old Way of Sealing Leases of Ejectment by Corporations, by Baron and Feme; in what Cases now to be used.

Ejectione Firme against one *Simul curio* had been ruled to be good, and so used in the Common Pleas, though heretofore it was adjudged to the contrary. *Stiles Rep.* 15.

It lies against Baron and Feme. *Lib. Intr.* 253. *9 Rep.* 77. *e. Peytoe's Case. Pl.* 187.

It lies against the Ejector or Wrong Doer, be who he will.

When the Course was to seal an Ejectment to try a Title of Land, the Ejector in Law was any Person that comes upon any Part of the Land, &c. in the Ejectment-Lease, though it be by Chance, and with no Intent to disturb the Lessee of Possession, next after the Sealing and Delivery of the Ejectment-Lease; and such an Ejector was a good Ejector, against whom an Action of Ejectione Firme may be brought to try the Title of the Land in Question. But he that was to try a Title of Land in Ejectment, ought not to have made an Ejector of his own, again whom he might bring his Action; or to consent or agree with one to come upon the Land let in the Ejectment-Lease, with

Who was accounted an Ejector formerly.

## The Law of Ejectments.

The new  
Course in  
Ejectments.

an Intent to make him an Ejector, and to bring his Action against him; for by that Means, the Tenant in Possession of the Land was after put out of Possession by a Writ of *Habere fac' possessionem*, without any Notice given to him or his Lessor of the Suit. But now the Law is otherwise, and altered by the new Way of Practice; for now it is not usual to seal any Lease of Ejectment at all in this Action, but the Plaintiff that intends to try the Title, signs a Lease of Ejectment in his Declaration, and Ejector, and draws a Declaration against his own Ejector, who sends or delivers a Copy thereof to the Tenant in Possession, giving him Notice to appear and defend his Title, or else the Ejector will confess, or suffer Judgment by Default: But if the Tenant or the Lessor will defend the Title, then it is usual for them to move the Court that they may be made Ejector to defend the Title, (that is) the Tenant appears, and consents to a Rule, with the Plaintiff's Attorney, to make himself the Defendant in the Room of the casual Ejector; and this the Court will grant, if he will confess Lease, Entry, and Ouster, and at the Trial stand meerly upon the Title; but if they do not at the Trial confess Lease, Entry, and Ouster, then the Judgment shall be enter'd against the casual, (*viz.*) the Plaintiff's own Ejector.

*Note*, The Court said in *Addison's Case*, *Mod. Rep. 252.* That they take no Notice judicially, that the Lessor of the Plaintiff is the Party interested, therefore they punish the Plaintiff if he release the Damages;

but

but in Point of Costs they take Notice of him.

But before I proceed further, I hope it will not be tedious a little to shew how the Law of sealing and Practice was taken when Ejectment-  
Leases were sealed, and Entries to be duly made, and Warrants of Attorney made to deliver the Lease upon the Land by a Corporation, Baron and Feme, &c. especially considering that in inferior Courts the old Way of actual sealing Leases is continued.  
*Winch 50. 1 Brownl. 129. Godb. 72. Earl of Kent's Case.*

The old Way  
Leases of  
Ejectment.

And First, The Way to execute a Lease to try a Title, the Land being in many Mens Hands, was to enter into one of the Parcels, and leave one in that Place, and then he must go into another, and leave one there, and so of the rest; and then after he had made the last Entry there, he sealeth and delivereth the Lease; and then those Men that were left there must come out of the Land. But when a Title was to be tried by Ejectment, and a Lease to be executed by a Letter of Attorney, the Course was, That the Lessor do seal the Lease only, and deliver it as an Escrow, and the Letter of Attorney, and deliver the Letter of Attorney, but not the Lease; for the Attorney must deliver that upon the Land. And upon Ejectment brought of Land in Two Villages, as of an House and Forty Acres of Land in *A* and *B*. and a special Entry in the Land adjoining to the House, (*viz.*) the putting in of an Horse which was drove out of the Land by the Defendant; this was adjudged

## The Law of Ejectments.

judged a good Entry for the Land in both the Villages *per totam Curiam*. So of Lands in one County. Palmer 402. Argall and Cheney.

### By Corpora- tion.

The Corporation of Mercers were seised of the Lands in Question, in the several Possessions of two Men; and being so seised, made a Deed of Lease to the Plaintiff, and a Letter of Attorney to deliver the Deed and the Possession. The Attorney enter'd upon the Possession of one of the Men, and there delivers the Deed, and after enters in the Possession of the other, and there doth deliver the Deed: The Question was, If it were good for the Land for which the second Delivery was, because one Deed cannot have two Deliveries? But the Court held, it shall be intended the first Delivery was good for all; and it shall not be intended but that the two Men had Possession only as Tenants at Will to the Corporation, and then the Delivery of the Lease in one Place is good for all; and it shall not be intended they had an Estate for Years or Life, except the contrary be shewed.

### By Baron and Feme.

Baron and Feme join in a Lease by Indenture to *B.* rendring Rent for Years, and make a Letter of Attorney to seal and deliver the Lease upon the Land, which is done. *B.* brought Ejectment, and declares of a Demise made by the Baron and Feme; and upon Evidence to the Jury it was ruled *per Cur'*, That the Lease will not maintain the Declaration; for Feme-Covert cannot make a Letter of Attorney to deliver a Lease of her Land, but the Warrant of Attorney

## The Law of Ejectments.

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torney is meerly void ; so that this only is a Lease of the Husband, which is not maintained by the Declaration. But *Hopkins's Case* in *Cro. Car. 165.* is against this, where the Plaintiff declared of a Lease made by Baron and Feme. On Not guilty, it appear'd on the Evidence, that the Lease was sealed and subscribed by them both, and a Letter of Attorney made by them to deliver it upon the Land. *Per Cur'*, It's a good Letter of Attorney by them both, and the Lease well delivered, and it is a Lease of them both during the Husband's Life. *Yelv. Wilson and Rich, 2 Brownl. 248.* *Plomer's Case, Cro. Car. 165.* *Hopkin's Case, 2 Leonard 200.*

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CHAP.

## C H A P. V.

*The new Practice in Ejectments. Of delivering Copies of Declarations. Ejectment in inferior Courts. Of confessing Lease, Entry, and Ouster, and Rules of Court relating thereunto. Of Refusal to confess Lease, Entry, and Ouster, and the Consequence. A Note in Writing of the Tenants in Possession. Of taxing Costs on Refusal to confess Lease, Entry and Ouster. Of how much the Defendant shall confess Lease, Entry and Ouster. Ejectment on Nonpayment of Rent, Lease defective. In what Cases there must be an actual Entry, and where it is supplied by confessing Lease, Entry and Ouster. Where the Defendant shall not be compelled to deliver a Note in Writing of what is in his Possession. Rules concerning one's being made Defendant. If a Parliament-Man may be admitted Defendant of the Ejectment Lease. One may lay as many Demises in a Declaration in Ejectment as he please.*

**H**OW necessary the Knowledge of this Practice is to one who would manage his Client's Cause with Discretion and Success, is sufficiently apparent, and needs no further Recommendation.

*The new Practice of Ejectments.*

*Note, By the new Way of Practice, it's not usual to seal any Lease of Ejectment at all in*

## The Law of Ejectments.

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any Action of Trespass and Ejectment, except only where an House or Land is empty, and that Person who was last in Possession is run away, and you cannot find any fit Person to deliver the Declaration to, then you must proceed the old Way, by sealing a Lease upon the Ground; and give Rules to plead, (but you cannot have Judgment against the casual Ejector without a Motion of Court for that Purpose, after the Rules of Pleading are out) and except in case of Inferior Corporations.

And by this new Practice, a Copy of the Declaration in Ejectment is to be delivered to the Tenant in Possession or his Wife, (Q. If Son or Daughter, or Servant, be good, *Vide Infra*;) and upon such Copy there must be an Indorsement or Subscription in English, acquainting the Tenant what it is, and for what; which Indorsement or Subscription must be read to the Tenant, or his Wife, by him who delivers the same, at the Time of the Delivery thereof. If the Tenant doth not appear the Beginning of the next Term, then upon *Affidavit* made of the Delivery of a Copy of the Declaration thereunto annexed unto the Tenant or his Wife, and reading of such Indorsement or Subscription, or acquainting them with the Contents thereof, the Court will make a Rule for the Tenant to appear and plead by a certain Day; at which Time, if the Tenant appears, he must by his Attorney file Common Bail, and draw up a Rule to confess Lease, Entry and Ouster, and leave it at a Judge's Chamber, and give Notice thereof to

## The Law of Ejectments.

to the Plaintiff's Attorney, to proceed if he thinks fit. But if the Tenant in Possession doth not appear by the Time appointed by the Court, Judgment will be enter'd up against the casual Ejector by Default, and the Tenant in Possession will be turned out of his Possession by *Habere fac' Possessionem* upon such Judgment.

The Court will not suffer the Plaintiff to amend his Declaration in Ejectment after Delivery, and before Plea pleaded; but the Plaintiff must stand and fall by his Declaration as it is, or deliver a new Declaration.

It is sufficient in Ejectment brought to try the Title of the Land, if the Tenant in Possession of the Land have a Copy of the Declaration delivered to him or his Wife, tho' he be an Under-Tenant, and altho' no Notice be given to the proper Tenant, or to the Owner of the Land. *Hill. 23 Car. 2. B. R.*

To deliver a Copy of a Declaration to a Servant is sufficient by *Dolben*, but by *Holt* it is not; but to the Wife it was good. There is a Difference between this and a *Subpæna*, which may be delivered to a Servant; the Reason is, because the Law is tender in case of Possession. *1 W. & M.*

If Trustee of a Lease be Lessor in Ejectment, his Disclaimer *in Paus* will avoid the Plaintiff's Title. *2 Keb. 794.*

Ejectment  
in inferior  
Courts.

It must be observed, (as was adjudged in the Mayor of *Bristol's Case*) that there, or in any other inferior Court, they cannot make Rules to confess Lease, Entry and Ouster, as in the Courts of *Westminster*, but they must actually

actually seal the Lease, as at Common Law. And so it was in *Sherman* and *Cook's Case*, where it was moved, That the Defendant, who by *Habeas Corpus* had removed an Ejectment out of the Sheriff's Court, might consent to a Rule of Court, that he should confess Lease, Entry, and Ouster; but the Court refused, the Defendant not being bound by the Rule below, because they cannot proceed by Way of delivering Declarations to the Tenants in Possession, but as at Common Law by actual Lease sealed: And by *Hyde*, all the Trials below, Trials below are tried in the casual Ejector's how.  
 Name by him that is Tenant in Possession, to avoid Charge. *P. 16 Car. 2. B. R. Mic.*  
*16 Car. 2. B. R.*

Where the Freeholds are several, and one Defendant gives a Note of what is in his Possession, the Plaintiff must sever his Action, else the Defendant might lose his Costs, for which on Severance he would have legal Remedy. And here is no Inconvenience, because the Plaintiff may take Judgment against his own Ejector for the rest; and the Defendant shall not confess Lease, Entry and Ouster of all, but only of so much as is in his own Possession, which is the only Way to save his Costs. And *Medlicot's Case* was, where the Plaintiff's Title is only by the Demise of *A.* and the Defendant's several, the Plaintiff offered to secure Costs severally to all; but he was ordered by the Court to deliver several Declarations, that none may defend for more than is in his own Possession, else the Plaintiff might clap in an Acre of his own to save Costs: And Agreements

Where the Freeholds are several, the Plaintiff must sever his Action.

The Defendant not to confess Lease, Entry, and Ouster, for any more than is in his own Possession.

## The Law of Ejectments.

ments of Parties are no Guide to Rules, but would make the Court but arbitrary; and this Rules is no Hindrance of Trials at Bar, where many Defendants have but the same Title. *Trin. 21 Car. 2. B. R. Medlicot's Case.*

The Inconvenience of the new Course of leaving Declarations.

In Ejectment the Ouster was confessed of a Third Part, of a Fourth Part, of a Fifth Part, in Five Parts to be divided; which by *Hide* is very inconvenient, and crept in since the new Rule of leaving Declarations, the Lands being in several Places distinct from each other, and may be held by several Titles, which could never be, had the old Course of actual Ejectment continued; but on Suggestion that the Title was but one, and one Plaintiff, and one Defendant, it was admitted. *Mich. 15 Car. 2. B. R. Cole and Skinner.*

Motion for Attachment against Attorney, for procuring one to be turned of quiet Possession.

*Secundo Anne, in Holderstaff and Saunders's Case,* Serjeant Hooper moved for an Attachment against an Attorney, and some more, who had got one in quiet Possession turned out, thus: He got one to come upon the Land, who assumed the Name of the Tenant in Possession, and owned himself to be the Man, and got the common *Affidavit* of Service to him by the borrowed Name, as Tenant in Possession, having delivered a Declaration to him before, and thereupon got Judgment against the casual Ejector, and turned the Tenant, who was wholly ignorant of all this, out of Possession. Upon *Affidavit* of this Matter, all the Accomplices were ordered to attend; for though the Court looked upon it as a very great Offence, they would not

not at first Dash grant an Attachment, but said, that it being in a criminal Matter if Endeavours were used to serve them with the Rule, and they could not be found upon *affidavit* of that Matter, they would grant an Attachment without requiring personal Service.

Formerly, after a Nonsuit at the Assize, *2 Ind. 2d.* for want of confessing Lease, Entry, and Ouster, the Plaintiff's Attorney immediately made out a Writ of Possession: But the Practice is since altered, so that now it cannot be done till after the *Postea* comes in at the Day in Bank; for it may be, there was no due Notice of Trial given, or there may be some good Reason to set aside the Nonsuit. *Per Mr. Lilly.*

In Ejectment where there are divers Defendants, who are to confess Lease, Entry, and Ouster, if one doth not appear at the Trial, the Plaintiff cannot proceed against the rest, but must be nonsuited. *1 Ventr.*

In Ejectment the Plaintiff shewed Copy of Four Acres to save Costs, the Title being on Will or no Will; but not being able to prove where particularly, the Court gave Leave to the Defendant that claimed by the Will, to retract the general Confession of Lease, Entry, and Ouster, as to this, and to have Judgment against the casual Ejector.

*M. 27 Car. B. R. Hyde and Preston.*

*7 L. 378  
~ 17.*

In what Case  
the Court will  
give Leave to  
retract the ge-  
neral Confe-  
ssion of Lease,  
Entry, and  
Ouster.

## The Law of Ejectments.

*If the Defendant refuse to confess Lease, Entry, and Ouster, the Rules are thus:*

**Of the Defendant's Refusal to confess Lease, Entry, and Ouster.**

To pay no Costs.

Where the Defendant was by Rule of Court at the Trial (which was to be at the Bar) to appear and confess Lease, Entry, and Ouster, and to stand upon the Title only, yet at the Trial he would not appear; upon which the Plaintiff was nonsuit, and yet Judgment was for the Plaintiff upon the Rule, and he was ordered to pay the Jury. And in *Davies's Case*, 13 Car. 2. B. R. H. desired to be made Defendant, confessing Lease, Entry, and Ouster, and at the Trial resolved so to do; but the Court denied that he should pay Costs, because thereby the Plaintiff hath recovered, and so hath the Fruit of his Suit. But in *Williams and Hall's Case*, on Trial at Bar the Defendants refused to confess Lease, Entry, and Ouster. *Per quod* the Plaintiff was nonsuited; and it was moved, that in regard the Default was the Defendant's, that the Plaintiff might have Attachment against the Defendant, according to the Course of the Common-Bench, which the Court granted. So upon a Judgment against his own Ejector in Default of confessing Lease, Entry, and Ouster, without a special Rule, no Costs shall be paid by H. the Tenant in Possession, that made this Default, because the Plaintiff hath Benefit of his Suit, (*viz.*) Judgment against the Ejector, whereby he may recover Possession. *Stiles*, p. 425. 13 Car. 2. B. R. 15 Car. 2. B. R. 1 Keb. 242.

In

In *Trin. 15 Car. 2.* it was ordered by the Court, that in every Action of Trespass and Ejectment, where by Rule of Court the Defendant ought to confess Lease, Entry, and Ouster, for so much of the Premisses in the Declaration mentioned as is in the Possession of the said Defendant, or his Under-Tenants, the said Defendant's Attorney should forthwith deliver to the Plaintiff's Attorney A Note in Writing of the Tenements so being in the Possession of the said Defendant, or his Under-Tenants.

A Note in Writing of the Tenements in Possession.

If the Defendant doth not at *Nisi prius* confess Lease, Entry, and Ouster, according to the Rule, then the Plaintiff must be nonsuit; but there must not be any Costs taxed against him, but the Rule for confessing Lease, Entry, and Ouster, must be carried to the Secondary, who taxes Costs upon it, which must be demanded from the Defendant; and if the same are not paid, the Court will, upon an *Affidavit* and a Motion, grant an Attachment against the Defendant.

Of taxing Costs upon Refusal to confess Lease, &c.

The Form of the Rule of confessing Lease, Entry, and Ouster in *B. R. & B. C.* *Vide infra.*

## The Law of Ejectments.

*Of the Effect of an Entry according to the Rule, and where it will supply an actual Ouster, and where not.*

Where confessing Lease, Entry, and Ouster, will supply an actual Ouster, or not.

Ejectment was brought by Devisee of a Rent, on Condition, that if a Legacy be not paid yearly, &c. that it shall be lawful for the Devisee to enter; and after the Demand made of the Rent, this Action was brought, and the Lease, Entry, and Ouster, was confessed. *Per Windham*, this is only of an Entry sufficient to make the Lease that entitles to the Action, not of an Entry that gives Title to the Land; and for Non-proving of an actual Entry, the Plaintiff was nonsuited; but otherwise in case of a Lease rendering Rent, to be void by Re-entry by Non-payment. In the Ejectment there was a Rule for confessing Lease, Entry, and Ouster, and the Question was, Whether this be sufficient without Proof of actual Entry? *Per Hale*, Chief Justice, the Confession is sufficient, else in every Case of Disseisin, &c. the Entry must be proved; but in Assignment of Assignee of Lessee, such Confession doth not avoid the Assignment, but that must be proved; and this is as actual Lease on the Land, which cannot be without Entry. And so is *Ventr. 248. Anonym.* The Lessor of the Plaintiff had a Title to enter for a Condition broken for Non-payment of Rent; Lease, Entry and Ouster was confessed, and the Court was moved, that in regard that the Lessor having such a special Title, and no

no Estate till Entry, whether such an Entry shall be supplied by the general Confession, or that there should be an actual Entry: And it was held, it should be supplied by the general Confession. But by *Hales*, if *A.* lets to *B.* and *B.* to *C.* to try the Title, the confessing of Lease, Entry and Ouster, extends only to the Lease made to *C.* and not to that made to *B.* *P. 26 Car. 2. B. R. Abbot and Sorrel's Case, M. 25 Car. 2. B. R. Wister and Gibson, 1 Ventr. 248. Anonym.*

In *Okely and Norton's Case, M. 22 Car. 2. B. R.* Judgment was prayed for not confessing Lease, Entry, and actual Ouster, by one Coparcener against another. *Per Cur'*, On the former Rule to confess Lease, Entry and Ouster generally, actual Ouster need not be confessed, and Judgment was against the casual Ejector. The Rule to confess Lease, Entry, and Ouster, does not extend to confess actual Entry upon a Lease, which is the Title: But the Court said, an Entry shall be intended until the contrary be proved of the other Side. The Case was upon Evidence to a Jury at the Bar. The Plaintiff's Title was a Lease for Five thousand Years, which Lease was sealed and delivered at London; and the Council for the Defendant would put the Plaintiff to prove an actual Entry by Force of this Lease; for it was agreed, that the Rule to confess Lease, Entry and Ouster, doth not extend to it. But *per Cur'*, It shall be intended that he enter'd, until the contrary be proved on the other Side. *M. 22 Car. 2. Okely and Norton, Sid. p. 223. Langborn and Merry.*

The Rule to  
confess Lease,  
Entry, and  
Ouster, does  
not extend to  
confess actual  
Entry upon a  
Lease which  
is the Title.

Ejectment on Non-payment of Rent. In *Chivers and Drurye's Case*, per Holt, Chief Justice, if the Lessee break his Condition by Non-payment of Rent, and the Lessor makes an actual Entry, and so avoids the Lease, and then brings Ejectment, &c. we cannot set aside his Ejectment on the Lessee's paying his Rent; but if the Lessor doth not make an actual Entry, but brings Ejectment, we will not compel the Defendant to confess Lease, Entry, and Ouster, if he will bring the Rent into Court; for in such Case we can take Care that the Lessor shall not have Advantage of our Rule.

Lease defective.

If the Lease be defective, we can give no Judgment; and the Rule of Court doth not bind the Defendant to confess the Lease otherwise than you have made it. *Stiles Rep. 343. Theoball's Case.*

Upon a Trial in Ejectment, the Title of the Plaintiff's Lessor appeared to be by a Remainder, limited to him for Life upon divers other Estates, and that there was a Fine and Proclamation; but he, within the Five Years after his Title accrued, sent Two Persons to deliver Declarations upon the Land, as the usual Cause was upon Ejectments brought. *Per Cur'*, This is no Entry or Claim to avoid the Fine, he having given no express Authority to that Purpose; and the Confession of Lease, Entry and Ouster, shall not prejudice him in this Respect. *M. 25 Cat. B. R. Clark and Phillips.*

As for one's being made Defendant, the Rules are thus:

He that desireth to be made Defendant in Ejectment for as much as is in his Possession, or of his Under Tenant, must give a Note to the Attorney of the Plaintiff in Writing of what the Particulars are, of which he is in Possession, or his Under-Tenant, to prevent Delay at the Assizes. *Trin. 15 Car. 2.* so ordered.

The Defendant to give a Note of what is in his Possession.

Ejectment for Two Messuages, Two Gardens, and 70 Acres of Land, 15 of Meadow, &c. in *M.* The Plaintiff delivered Two Declarations to Two Tenants only; and as to the Lands in their Possession, the Defendant enter'd into the common Rule; but because he had made several small Purchases in that Parish, and the Plaintiff claim'd 20 Acres lately granted to him by Lease from the Bishop of Gloucester, therefore he moved, that the Plaintiff might give a Note in Writing before the first Day of the next Term, what Lands in particular he claimed, and where such Lands lie, and in whose Possession, &c. or otherwise that he might not proceed to a Trial at the next Assizes; for the Defendant not knowing what Lands the Plaintiff would claim, could not tell what Purchase-Deeds to produce at the Trial. *Sed non alicatur. 4 Mod. 214. Gwin versus Pic.*

The Court would not compel the Plaintiff to deliver a Note in Writing what Lands he claimed in the Declaration, being general.

## The Law of Ejectments.

If the Defendant in Ejectment will not plead according to the Rules of the Court, there must be *Affidavit* made of the sufficient serving of the Declaration, and then Council must move upon that Ejectment to have Judgment against their own casual Ejector, which the Court will grant, and make a Rule, that unless the Tenant in Possession will appear, and become Defendant within such Time as the Court shall think fit, that Judgment be enter'd against the casual Ejector.

He that desireth to be made Defendant in Ejectment for so much as is in his Possession, must give a Note what the Particulars are of which he is in Possession, to prevent Delay at the Assizes. 1 Keb. 677.

In Ejectment it was moved by Serjeant *Tremaine*, that a Parliament-Man, Lessor of the Tenant in Possession, might be admitted Defendant, lest the Default of the Tenant might prejudice him; but the Court denied it, having advised with the Prothonotaries, who said, that no privileged Person could be so admitted: Then it was prayed that the Lord *Halifax*, being Guardian to the Earl of *Plymouth*, might be admitted Defendant, lest the Tenant in Possession should make Default; but the Court denied it, for that the Lord *Halifax* being a Parliament-Man, might insist on his Privilege. But they agreed, that the Lord *Halifax* should name some other Person of Note to be Defendant, who accordingly nominated one *Berkley*, one of the Tenants in Possession, and he was allowed *per Cur'*, and a Trial at Bar for the next Term.

# The Law of Ejectments.

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If in Ejectment a Declaration be deliver'd, and *J. S. secundum regulam Curie*, be admitted Defendant, and enters his Appearance with the Philizer; if then he leaves his Plea not guilty in the proper Office of the Declaration, with a Certificate of his Appearance from the Philizer, and then he must strike the casual Ejector out of the Declaration, and put in the Defendant; in such Case the Plaintiff cannot sign Judgment against the casual Ejector, neither on pleading such Admittance is the Plaintiff bound to give a new Declaration.

## *Two Defendants.*

No Person shall be admited to be Defendant in Ejectment with the Tenant in Possession, but he that hath been in Possession, or receives the Rent. *s W. & M. B. R.*

If there be two Ejectors named in one *Actio Firma*, one of them may be found guilty of the Trespass and Ejectment, and the other, as the Case may fall out, shall be quitted; and yet the Action is well brought, because there is a Trespass and Ejectment sued against one of the Defendants. But now by Stat. 8 & 9 W. 3. c. 10. unless the Judge, before whom the Cause was tried, certifies immediately after the Trial in open Court, that the Plaintiff had a reasonable cause for the making such Person Defendant in the Action, the Defendant shall have his costs as if a Verdict had been given against the Plaintiff.

If  
2.

By

## The Law of Ejectments.

By *Pinsent* in *B. C.* if one move that the Title of the Land do belong to him and that the Plaintiff hath made an Ejector of his own, and therefore prays, that giving Security to the Ejector to save him harmless, he may defend the Title, the Court will grant it, but will not compel the Plaintiff to confess Lease, Entry, and Ouster except he will be Ejector himself. But is not so in the Court of *King's-Bench*, for there in both Cases they will compel him to confess Lease, Entry, and Ouster. *Siderf.* Rep. 368.

Difference  
between the  
Course in the  
*King's-Bench*  
and Common  
Pleas.

He that is  
made Defen-  
dant in Eject-  
ment not to  
be charged  
with Actions  
by the By.

Motion to al-  
ter the Plain-  
tiff, and why.

The Course of the Court is, That on that cometh in to be made Defendant in Ejectment, upon his Prayer confessing Lease, Entry, and Ouster, shall not be charged with any Actions by the By; because he comes in without Process or Arrest, only to defend the Title.

In Ejectment after Declaration, and before Plea, he which had the Title moved the Court for to alter the Plaintiff, because he was to give Evidence; and the Court agreed to it, that he should alter the Plaintiff paying Costs, and giving Security for new Costs. And they may alter the Plaintiff in the Action upon the same Reason that they may alter the Defendant, which is usually done. *I Siderf.* p. 24.

After Default  
in Ejectment  
the Defendant  
may confess  
Lease, Entry,  
and Ouster.

*Note.* After Default (in Ejectment), the Defendant may confess Lease, Entry, and Ouster, and may give Evidence, and have all Advantages (except Challenges), and the Plaintiff becomes nonsuit, any one

the Defendant may pray it to be recorded.  
*Trials per Paix, 195.*

The Defendant was by Rule of Court at the Trial, which was to be at the Bar, to appear and confess Lease, Entry, and Ouster, and to stand upon the Trial only; yet at the Trial he would not appear, upon which the Plaintiff was nonsuit, and yet the Judgment as for the Plaintiff upon the Rule, and he was advised to pay the Jury. *Stiles Rep. 425.*  
*Still Harvey and Mountney.*

## *Of the Ejectment-Lease.*

You may observe what before is said, that it's a feigned Lease, and by the new Rule is to be confessed; and it's laid sometimes for Three Years, or Five, or Seven Years. And it is good to lay it for longer than Three or Five Years; for I have known by Injunctions and other Dilatory uses been Five Years out, and then the Plaintiff cannot have Judgment without beginning *novo.* And therefore Pemble and Sterne's Case being adjourned into the Exchequer-Chamber, the Court order'd an Enlargement of the Lease or Term from Seven to Twelve years, which they may do by Law, no Lease ever being actually sealed, but declared on, and consented to. *Trin. 21 Car. 2. Pemble and Sterne's Case.*

Enlargement  
of the Lease  
for a longer  
Term by the  
Court.

The Lease was 24 Sept. *habend'*, from Michaelmas next, *virtute cujus* the Plaintiff enter'd, and said not when. *Per Cur'*, It shall be intended on the Day after Michaelmas; but if it had been, *Virtute cujus* he enter'd *eod'*

*Virtute cujus*  
he enter'd.

## The Law of Ejectments.

How the Lease to be made where there are several Parts uncertain claimed.

Lease to try Title, no Maintenance.

ead' 24 Day of Sept. it had been ill. *Pafch*  
26 Car. 2. *Hallam and Scot.*

Lease of all Warrants, Ejectment of Part. Ejectment by Lessee of Lessee of the whole by the Daughters and Heirs of Sir Peter Vanlore, which was made by reason of the Uncertainty of the Part claimed by the Plaintiff. 2 *Keb. 700.*

You may lay as many Demises in a Declaration in Ejectment as you please, and if the Plaintiff recovers upon one of them it's sufficient *pro tanto*; as if for Land in *Gavelkind* the Plaintiff declares, That A. B. C. D. &c. 10 Dec. &c. did demise to him 100 Acres of Land, *babend*, &c. and also that C. D. demised to him one Sixth Part of the said 100 Acres of Land, *babend*, &c. and also that the said E. F. demised to him one Third Part, and also one Sixth Part of the said 100 Acres of Land, *babend*, &c. by Vertue of which several Demises he enter'd and was possessed. 3 *Ley. 117.*

Lease made to try a Title in Ejectment is not within the Statute of buying of Titles if it be not made to great Men, but to a Servant of him that hath the Inheritance. 2 *Brownlow* 133. 1 *Inst. 369. a.*

Note, Ejectment may be brought upon Lease made in the same Term. 1 *Ventr. 1.*

Upon a Lease made by Husbands and their Wives for the Trial of a Title, and the same executed by Letter of Attorney; the Leaf and Letter of Attorney were only sealed by the Husbands, and so not good. *Per Cur.* The Wives ought to have sealed also, and the Entry of the Attorney ought to have been

# The Law of Ejectments.

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been in all their Names. This by the old Course. 2 Roll. 2. 13.

In *Sheirton's Case*, 32 Eliz. resolved, that the Lessor may maintain the Suit of his Lessee in Ejectment. Cited by Mr. Thomas Crew in his Argument of *Banister and Eyre's Case*.

*Ejectione Firme* counts in a Demise for Years generally, and gives in Evidence an Indenture: It was good by common Practice.

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C H A P.

## C H A P. VI.

*Of Declarations. Of what Things an Ejectione Firme may be brought or not, and how. De Domo, De Tenement', De Burgo, De Cubiculo, De Repositorio, De Capella, De Coquina, De Cottagio, De Pomario, De Molendinis, De petia Terræ, De Manerio, De Crofto, De 1 Clauſo, De 3 Roods of Land, De Parcella Terræ, De duabus Acris fundi, Angl' Hop-ground; De Decem acris Pifar', De 300 acris Waſt, De 1 tonsura, De Coal-mine, De Rivulo ſeu Aquæ cursu, De Profit apprend', De Libera Piscaria, De 100 Acres of Bog, De 500 Acres of Mountain in Ireland, De 40 Acris Bosci & 20 Subbosci, De Decimis, De Jampnis & Bruera, De 1 Virgata Terræ, De Pannagio, De Herbagio, De libera Warrena, De Capella, De Carrucat' Terræ, De Light-house, De 600 Acres of Fen Marsh, De quadam Fabrica, Angl' a Smith's Shop; De Barony, De Dominio, De Commote, De Salino, De Ling-ground and Heath, De Rectora pro Proof of Part of an House, De Mineris Carbonn'; De quodam Loco, vocat' le Vestry. Ejectment, and declares of Two ſeveral Leaſes of the ſame Thing, by ſeveral Persons: De 6th Part of a Meſſuage in Two Parishes. Where the Evidence doth not maintain the Issue; of Common of Paſture; of a Fair. De Curtilagio. Of a Church Of an House in Australi vic. Anglice the High-Street in Winchester. General Rules of Declara-*

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rations in Ejectment. Variance between the Issue Roll and the Imparlane Roll. Of Entry and Ejectment supposed before the Commencement of the Lease: The Entry supposed after the Postea virtute cuius, How taken and expounded where the Demise is laid before the Time in the Declaration. Habend' a die datus expounded. When the Lease shall be intended to be delivered on the Day of the Demise, and not of the Date. Of the Postea scilicet. The Manner of declaring by Cobeirs, by Tenants in Common, by Joint-tenants, by Baron and Feme, by a Corporation. Upon a Lease by Tenant for Life, and him in Remainder. Upon a Lease by Commissioners of Bankrupts, by Copyholder, by Administrator.

THE new Way of Tryals in Ejectment by Confession of Lease, Entry and Ouster, and standing only upon the Title, make some Persons conceive, That Cases or Resolutions about Declarations in Ejectments (whose Form is now generally settled) to be useless and antiquated. And in Truth they are so in a great Measure; and yet notwithstanding there are several good Rules and Resolutions, as well relating to Matters of Law as Practice, and Forms, even since the said new Method has been taken up, both as to what Things an Ejectment may be brought or not, and Delivery, Entry, Variance, and Amendments of Declarations; as also how Declarations ought to be, when Coparceners, Jointenants, Corporations, Baron and Feme, Tenants in Common, Administrators, and the like, are concerned. And yet, even

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those former Cases and Resolutions as to the Commencement of Leases and Demises on which the Declaration is, and the Dates and precise Times of Entry and Ouster, deserve well to be considered; not only as so many curious Points of Law therein argued, of which it's not to be thought a general Lawyer would be ignorant; but because in Inferior Courts the old Way of delivering Declarations is and must be used.

I shall therefore in the First Place cite some of the principal Cases touching the Manner of declaring in former Times, as to the Dates and Commencement of Demises, &c. and then come to those Considerations and Rules which are of present Use, both as to Delivery, Entry, Forms, and the like, in which many Practisers may not be well informed, and which are founded upon late Resolutions. But first, I shall shew how Declarations are to be laid in respect of the Matter and Things for which the Ejectment is brought; concerning which, the Cases in our Books are very frequent, and very useful to be known.

Note, *Quod nunc* is well enough, because the Ejectment is positive. *Showre* 342.

*Of what Things an Ejectione Firme may be brought, and what not.*

*De Domo.*

Ejectment lies not *de una Domo*, because it may be a Dove-house or Dwelling house; but Cro. Jac. 654. in *Royston's Case contra*; That it lies *de Domo*, as well as *Wast de Domibus*, but it lies *de Domo vocat' Hols*, 2 Roll. Rep. 487, 482.

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482. Warren's Case. Cr. fac. vid. in Pasch.

1650. Fry and Pooly. Hard. 76.

Ejectment lies not *de uno Tenemento*. Eject- De Tenemento.  
ment was brought of an House, and the Moie-  
ty of a Tenement; it lies not for the Moiety  
of a Tenement; Verdict was (in this Case)  
given for the Plaintiff, and intire Damages.

The Plaintiff may well release his Damages Where the  
as to the Tenement, and take his Judgment Plaintiff may  
for the House, and then it shall not be Error, aid himself  
2 Bulst. 28. Rotbowick and Chappell. by Release of  
Part.

Ejectment lies *de uno Burgo*, Hardr. 123. De Burgo.  
Danver's Case.

Ejectment *de uno Cubiculo*, is good; as it was De Cubiculo.  
laid, it was *unius Cubiculi*, *per nomen unius Cu-*  
*biculi* being in such an House in the middle  
Story of the said House. The word *Cubiculum*  
is a more apt Word than *Camera*. Ejectment  
*de una Rooma*, it was said, had been adjudged  
good in B. R. So a *Præcipe* lies of an Upper-  
Chamber. 3 Leon. p. 210. 2 Rolls Rep. 48.

Ejectment *de uno Repitorio*, Judgment was De Repitorio.  
reversed, because it was uncertain, it not be-  
ing expounded in English, it was intended a  
Ware-house, W. Jones 454. Sprig's Case. Cro.  
Car. 251. mesme Case.

Ejectment *de uno Messuagio* five *Repositorio*,  
was held ill, because of the Uncertainty in  
the one Case, and because of the various Sig-  
nification of the Word in the other Case.

4 Mod. 136.

It is not formal to bring Ejectment *de unda De Capella*,  
*Capella*, but it ought to be by the Name of a  
Messuage or House. 11 Rep. 25. b.

*De septem Meſſuagiis five Tenemen-  
tis; it's ill after a Verdict for the Uncertainty,  
Teſtamentis.* Cro. El. 146.

*Ejectment de uno Meſſuagio five Tenemento vo-  
cat' the Black-Swan, is good per Twifden; for  
the laſt Words ascertain it. Had the Verdict  
been general for the Plaintiff for the Meſſuag-  
es, and Non Culp' for the Tenements, it had  
been good: And in this Case the Plaintiff can-  
not aid himſelf by releasing of Part, as it  
might be, had there been Lands in the Decla-  
ration. De Meſſuagio five Tenemento, is ill after  
a Verdict; but if the Judge will allow the Ju-  
ry to find for the Plaintiff for the Meſſuage,  
and for the Residue for the Defendant, it had  
been good; but the Plaintiff may not aid him-  
ſelf by Release. Siderf. 295. Burbury and Yeo-  
man. In Hexban and Conyer's Case, 3 Mod.  
238. Ejectment will not lie of a Tenement,  
it's of an uncertain Signification, it may be an  
Adwofſon, House or Land; but it is good in  
Dower, and with a *Vocat' the Black-Swan*.*

*Ejectione Firme lies not de Coquina, but it lies  
by Bill in B. R. tho' Coke ſaid it lies by Writ  
too, and the Law is all one. 1 Roll. Rep. 55.*

It was adjudged in Stiles Rep. 215. That  
Ejectment doth lie of a Cottage, because the  
Description of a Thing by that Name is ſu-  
ficient and certain enough to ſhew the Sheriff  
of what to deliver the Possession; but a Reco-  
very lies not of a Cottage. Stiles p. 258. Ham-  
mond and Ireland. Cro. El. 818. Hill and Gibs.

*Ejectione Firme lies de Pomario, and de Domo, for  
they are certain enough to give Possession, tho' a  
Precipe lies not of it; and many Things are  
recovered in Ejectment, which are not named  
in*

in the Register, as Hop-yard, &c. Cro. Jac. 654. Royston and Eccleston. Palmer 337. mesme Case. Cro. El. p. 854. Wright and Wheatly.

Ejectione Firme de quatuor Molendinis, without expressing whether they are Wind-mills or Water-mills, yet good. Mod. Rep. 9. Fitz Gerard's Case.

In Palmer and Humphrey's Case it was adjudged, That Ejectment lies *De pecia terræ*; but it was after reversed in the Exchequer-Chamber. Cro. El. 422. Palmer and Humphreys.

And a Declaration *De una pecia terræ continen' ducentas & unam Acram five plus five minus jacen' inter terras*, &c. this was adjudged ill after a Verdict, and Nil cap' per Billam entred. So continen' dimidiam acram terræ vocat'. It was said in Hancock and Pryn's Case, Ejectment of a Close of Land, or *de pecia terræ* containing so many Acres, had been good, W. Jones, p. 400. Savil 176. Hardr. 57.

Ejectione Firme de una pecia terræ vocat' Minching Furlong; una pecia terræ vocat' Great Ashbrook; una Gardino vocat' Mathin-Garden, que omnes & singulæ parcellæ terræ jacen' in Paroch' de W. Upon Plea, Not guilty, Verdict for the Plaintiff, and Judgment Accord', Tr. 36 El. B. R. Rot. 815. But this Judgment was reversed in the Exchequer-Chamber, because *pecia Terræ* is not a sufficient Certainty for the Sheriff to make Execution, and because there is not any Place expressed in which the Garden lies, for [que omnes & singulæ parcellæ terræ] refer to the Land, and not to the Garden.

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*De Manerio.*

*Ejectione Firme* cannot be of a Manor, for that there cannot be an *Ejectment* of the Services; but if they express further a Quantity of Acres, it is sufficient, and it lies of a Manor or the Moiety of a Manor, if the Attornement of Tenants can be proved; and there is none that brings *Ejectment* of a Manor, but they also add the Acres that contain it, to the end that if they prove it not a Manor, they may recover according to the Acres. *Vide infra. Hetley 80. Norris and Isham. And p. 146. Warden's Case.*

*De Crofto.*

It was doubted by *Rolls* and the Court, if an *Ejectment* lies *de Crofto*; therefore the Plaintiff moved for a special Judgment for the rest of the Land contained in the Declaration, and released the Damages as to the *Croft*, and had it; but afterwards in *Meeres and French's Case* it was agreed, That *Ejectione Firme* lies of a *Croft*, and Dower and Assise will lie of a *Croft*, because it is put in View of the Recognitors, tho' a *Formedon* nor *Præcipe* will lie of it, but 2 Car. p. Rot. 301. *Holmes and Wингreve, de Crofto* is ill in *Ejectment*, tho' good in *Assise. Rolls Rep. p. 30.*

*De uno Clauſo.*

*De tribus  
Roods of  
Land.*

*Ejectment de uno Clauſo*, without saying how many Acres, is ill. A Man makes a Lease of a Garden containing Three Roods of Land, Lessee is ousted and brings *Ejectment*; the Justices differed in Opinion, whether it were good, or not; but all agreed the best Order of Pleading to be, to declare, That he was ejected of a Garden containing Three Roods of Land. *Godb. p. 6.*

Eject-

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Ejectment doth not lie of a Close, altho' it had a certain Name; but it ought to be of so many Acres: And altho' it says, a Close containing Three Acres, yet it's not good if it doth not shew of what Nature the Acres are, as Meadow, Pasture, Wood, &c. and the Certainty ought to be in the Court in this Action. *11 Rep. 55. a. b.* but the Contrary to this hath been adjudged since. *Eject. Firme* was brought of Two Closes, *vocat' B. and N.* containing Three Acres of Land in *D.* upon Not guilty pleaded and Verdict for the Plaintiff, and upon great Deliberation the Count was held good, and Judgment given for the Plaintiff, for *Terra* is arable Land. *Week and Sparrow's Case*, adjudg'd *Mic. 15 Jac. B. R.* And this Judgment was afterwards affirmed in the *Exchequer-Chamber* in a Writ of Error brought upon this. *Private Mff. Vid. Car. 555. Sid. 229.*

*Parcella terræ* does not comprehend a *Garden in Ejectione Firme*, *Moor 702. Palm. 45.* *Parcella terra.*

*Ejectment de uno Clauſo continen' tres Acras per estimationem*, ill; but Indictment quare *Vi & Armis in Clauſum continen' tres Acras per Estimationem fregit*, is good. Debt or Demise of Seven Acres per estimat', is ill, *Dormer's Case. Brownl. p. 142.*

*Declarat' is, Quod cum dimisit to him unum Messuagium, unum Clauſum vocat' Dovecoat-Close, continen' tres Acras eidem Messuagio spectan'; per Cur' it does not lie of a Close, tho' coupled with other Words, because the Quality of the Soil is not alledged, as to say, Land, Meadow, Marsh, &c. And by Coke, if he had bound the Land without shewing the Quality,*

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*Regula.*

it had not been good; tho' it was objected, That by all the Words put together, here is sufficient Certainty to put the Party in Possession; and yet some Reports are to the contrary. *Ejectione Firme* of a Close called *White Close*, was said to be held good in *Ellis and Floyd's Case* cited in *Macdonell's Case*. But in *Ireland*, *Ejectment* was of a Close called *the Upper Kibwell*, and of another called *the Lower Kibwell*, containing Three Acres of Land, was held good. And it is a sure Rule, That the Certainty of the Land ought to be described, and the Quality, &c. And therefore the Case of *Jones and Hoell* seems not to be Law, which was *Ejectione Firme* of Seven Closes, one called *Green Mead*, and so gave to the others several Names, and the Verdict was for the Plaintiff, and by the Court there it's well enough: For, said they, when a Name is given to every Close, tho' the Contents of Acres are not mentioned, viz. so many of Land, so many of Pasture, it's sufficient, and aided by the Statute of *Feofails*.  
 11 Rep. 55. *Savill's Case*. 1 Roll. Rep. 55. *mesme Case*. Cro. Jac. 435. *Wilks and Sparrow*.  
 2 Roll. Rep. 1. 608, 189. *Macdonel's Case*.  
 Cro. El. 235. *Jones and Hoell*.

It's not distin-  
guished how  
much of Pa-  
ture, and  
how much of  
Meadow, ergo  
ill.

In *Martin and Nicols Case*, Error was assigned, because the Declaration was of a Messuage, and Forty Acres of Land, Meadow and Pasture thereunto appertaining, and it was not distinguished how much there was in Land, and how much in Pasture, and the Judgment was reversed, Cro. Car. 573. *Martin and Nicols*. Vid. 4 Mod. 97. *Knight versus Simms*.

*Observe,*

Observe, In *Ejectione Firme* or a *Præcipe of Acresaccord.*  
100 Acres, this is according to Statute mea-  
sure; but if one bargain and sell 100 Acres of  
Land to another, that shall not be according  
to the Statute-measure, but after the usual Ac-  
count in the Country; in *Andrews Case*, cited  
in *Ewer and Heydon's Case*.

The Declaration was, That he was ejected  
*è duabus Acris fundi, Anglice, Hop-ground.*  
*Per Rolls*, it is good in a Grant, but not in  
Declarations, and the *Anglice* here does not  
help it, for the *Anglice* is not to interpret a  
*Latin Name* by which it is called, *Stiles Rep.*  
202, 203. *Meers and French.*

*De duabus  
Acris fundi,  
Anglice, Hop-  
ground.*

Ejectment lies *de decem Acris Pisarium*; for in  
common Acceptance, Ten Acres of Pease,  
and Ten Acres of Land sowed with Pease, is  
all one. *I Brownl. 150.*

*De decem Acris  
Pisarium.*

Ejectment of Three hundred Acres of Wast,  
*inter alia, &c. Per Cur.*, Wast is uncertain, and  
may comprehend Land of any Quality, and  
the Sheriff will be at a Loss what Land to de-  
liver; and after the Plaintiff released the Wast  
and Damages, and took Judgment of the Re-  
sidue, *Hardr. 75. Hancock and Prynne.*

*De 300 Acres  
of Wast.*

Ejectment lies *de prima Tonsura* of the First Crop, *Cro. Car. 362. Ward.*

*De prima Ten-  
sura.*

Ejectment lies of a Coal-mine, for it is a Pro-  
fit well known. Ejectment of Land and a  
Coal-pit in the same Land, ruled to be good,  
because it is in a personal Action; *aliter in a*  
Real Action, because it is *bis petitum*, *I Rolls*  
*Rep. 55. Cro. Jac. 21. Harbottle and Placock.*  
*Vide infra.*

*De Coal-mine.*

It lies of a Boillary of Salt-water. *Siderf. De un. Boillary*  
*161: of Salt.*

*Eject.*

*De Rivulo seu  
Aqua curfu.*

Ejectment lies not *de Rivulo seu Aqua curfu*, therefore Godbolt, p. 157. n. 213. is not Law; nor a *Præcipe* lies of it, and Livery and Seisin cannot be made of it; for *non moratur, non est firma*, but is always fluctuant, and Execution by *babere fac' Possessionem* cannot be made of it, but the Action ought to be of so many Acres of Land *aqua coopert.* but if the Land under the River or Place appertains not to the Plaintiff, but the River only, then upon Disturbance his Remedy is only by Action on the Case upon any Diversions of it, and not *aliter*, *Telv.* 143. *Challoner and Thomas.* *Mic.* 6 *Jac.* *Challoner and Moor.* *Cro. Car.* 492. *Herbert and Llangblyn's Case.*

*De Profit ap-  
prender.*

*Ejectione Firme* lies not *de Profit apprender*, and so not of a Common or Rent, nor of a Piscary, it must be *terra aqua cooperta* in such a River, tho' the Court seemed doubtful of it in *Molineux's Case*, which was, Ejectment of an House and Lands in *T.* *nec non de Libera Piscaria infra Rivulum de Trent*, in which Action Damages were entirely given; but to avoid the Question, the Plaintiff released his Damages totally, and his Action *quoad* the Piscary, and had Judgment for the Residue. *Cro. Jac.* 146. *Molineux.*

*De 100 Acres  
of Bog.*

Ejectment was brought in *Ireland* of Forty Messuages, Five hundred Acres of Land, an Hundred Acres of Bog in the Villages and Territories of *D. S.* and *V.* *Bog* is an usual Word, and well known there, and if it were not, the Plaintiff may release his Demand as to that, and have Judgment for the Residue. Another Exception was, because it was in *Villis & Territoriis*; but *per Cur'* it's well enough, and

*In Villis &  
Territoriis.*

and of the same Sense; and if not, it is but Surplusage, as to the Territories, but Ejectment of 500 Acres of *Mountain* in *Ireland*, is *De 500 Acres* ill, for it's not of one Nature, but several, as of *Mountain* *Turfs*, *Pasture*; but a *Præcipe* is good *de Saliceto*, *de Stagno*, *de Dominio*, by the general Notice the Country hath of them where the Lands lie, and of their Quality. On Ejectment in *Ireland*, Error was brought in *B. R.* here, because he brought Ejectment of 40 Acres of Wood, and 20 Acres of Underwood, and so one Thing twice demanded, because Underwood is a Species of Wood, *sed non allocatur*, because this does not appear to the Court, and this shall not be alledged for Error, but ought to be taken in Abatement of the Writ, *Cro. Car. 512. Mulcarry and Eyres. 2 Rolls Rep. 166, 189. Macdonnel's Case. 2 Rolls Rep. 487, 482. Warren and Wakeley.*

*De 40 Acris  
bosci, & 20  
Acris subbosci.*

This Case is more fully reported in a *M*. that I have.

*Eject. Firme in B. R. in Ireland, De quingent' Acris Mountain*; and Judgment upon Verdict given for the Plaintiff there *inter* the said *Macdonel* and *Stafford*; on which *Stafford* brought a Writ of Error in *B. R. in England*, and there one of the Errors alledged was, That Mountain is uncertain, for it may be Pasture, Arable or Wood, and so the Sheriff cannot know of what to make Execution; whereupon the Court sent to Justice *Wincb.*, Baron *Denham*, *Lee*, Attorney of the Wards (he being before Chief Justice of *Ireland*), to certify to them, what is meant in *Ireland* by the Word [Mountain], and if it be so certain

as to be demanded in a *Præcipe* by that Name; upon which they certified, That the Practi-  
fers in *Ireland* follow the Register, *Fitz. N.*  
*Br.* and the Book of Entries; and that in  
many Places in *Ireland* are Mountains which  
contain Lands of divers Natures, as Wood,  
Arable, Pasture, Heath, Bog, barren Moun-  
tain, the Nature of which ought to be ex-  
press'd in Declarations; and Mountain deno-  
minates a Portion of Land in respect of the  
Situation (as Downes here), but doth not dis-  
tinguish the Quality of the Land. To which  
a Surveyor of *Ireland* agreed, and the Court  
for the said Error reversed the said Judgment.  
*Tr. 18 Jac. B. R.*

*De omnibus  
Decimis.*

*De quadam  
portione Deci-  
marum.*

*Ejectione Firme de omnibus Decimis*, is not  
good, without saying, *Garbarum, Fæni*, or any  
Certainty of the Nature or Quality of Tythes;  
it lies not *de quadam portione Decimarum* gene-  
rally, but *de quadam portione Granorum & Fæni*  
is good; the Nature ought to be shewed,  
though not the Certainty; and the Ejectment  
was supposed in *May*, when there is not any  
Tythes, and so not good. It may be, That  
all the Tything consists in *Modo Decimandi* for  
Payment of an yearly Sum in Satisfaction of  
Tythes, whereof no *Ejectione Firme* lies. It  
was a Question in *Preist* and *Wood's Case*,  
*Cro. Car. 301.* Whether an *Ejectione Firme* lay  
of Tythes only? It may be of a Rectory, or  
such a Chapel, and of the Tythes thereunto  
belonging, whereof an *Habere fac' Possessionem*  
may be; but it was adjudged *pro Querente*.  
The Ejectment was supposed in taking so  
many Loads of Wheat and Barley, being se-  
vered from the Nine Parts. *1 Roll. Rep. 68.*  
*cited*

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cited in *Worral and Harper's Case*. 11 Rep. 25.

*Harper's Case*. Cro. Car. 301. *Preist and Wood*.

Ejectment of so many Acres *Fampnorum & De 20 Acris Bruere*, and does not express how many of *Fampnorum &* each, yet good, *Mod. Rep. 9. Fitzgerald's Bruere*. *Case*.

*Ejectione Firme de una virgata terræ lies not, De una Virga-* and so it was adjudged in the *Exchequer-Cham. ta terra.*

*ber. Error was brought of a Judgment in C. B. in Ejectment de Virgata terræ on general Verdict, which is ill, being uncertain in every County; but the Plaintiff below might have released Damages as to that, but now it is too late. Cro. Eliz. 339. Jordan's Case.*  
3 Keb. 450. *Hill and Johnson*.

*Ejectione Firme lies not de Pannagio. Q. de De Pannagio.*  
*Parco. Sid. 417.*

*It lies de Herbagio. 2 Rolls Rep. 481, 482. De Herbagio.*

*Ejectione Firme was brought for Entry into a Messuage five Tenementum, and Four Acres of Land to the same belonging. Per Cur' the Declaration is uncertain; but it was said, as to the Four Acres, it was certain enough, and the Words [to the same belonging] are merely void, and the Plaintiff released Damages, and had Judgment. 3 Cro. 28. *Wood and Pain*. Cr. El. 186. *mesme Case*.*

*Ejectment lies not of a Free Warren. 1 Keb. De liberis Warrenis.*

*Count of the Moiety of 20 Acres of Land, De Moiety of 20 Acres of Land. is well enough, and Trespass lies against the Sheriff, if he does not execute on the Right Places. 1 Keb. 278. *Lufton's Case*.*

*Per*

*De uno Stabulo.*

*Per Cur'*, Ejectment lies *de uno Stabulo*, or where-ever the Thing is so certain that the Sheriff may do Execution. 1 Keb. 236. *Whit. acre's Case.*

*Separalis Piscaria usque ad filum aquæ can. ad C.*

*Separalis Piscaria usque ad filum aquæ can. not be counted upon, but per Windham such Evidence might be given of such Piscary by Metes and Bounds. 1 Keb. 290. Sir Chr. Giese and Adams.*

*De Capella.*

*Ejectment lies de Capella, per Windham. 1 Keb. 438.*

*Of an House and Land in quodam campo juxta le Castle hill.*

*Ejectment was laid on Demise at T. of an House and Land in quodam campo juxta le Castle hill, which per Cur. is ill, (on Motion in Arrest of Judgment;) for no Execution can ever be directed to any Sheriff; and it must appear where the Land demised lieth. 1 Keb. 777. *Touk and Atbo.**

*De 10 Hides of Land.**Carrucat. terra, what.*

*Ejectment of Ten Hides of Land is good; a Hide of Land is the same as Carrucat', which is as much as a Plow which is usually intended to have Six Horses may manure in a Year, and being 100 or 120 Acres in Northamptonshire. 1 Keb. 877. Wright and Sherrard.*

*De Messuag. & Tenement.*

*Ejectment de 7 Messuagis five Tenementis, is ill after a general Verdict, and it's on Demur-rer; this might have been helped by taking Verdict of either: So it is when the Eject-ment is *de Messuagio & Tenement'*, it's ill after General Verdict. 2 Keb. 80, 82. *Burbury and Yeomans.**

*Light-house.*

*Ejectment does not lie of a Light-house, but Action on the Case. 2 Keb. 114.*

*Ejectment of the Pannage of a Park, is ill. 2 Keb. 460.*

*Eject.*

*Ejectment of a Close of Meadow doubted in De Close of Steel and Stanly's Case. Mic. 22 Car. 2. B. C. Meadow.*

*Ejectment of 600 Acres of Fen-Marsh, Meadow, arable Lands: Twisden asked the Plaintiff whereof they would take their Verdict, if they would have it of Marsh; and as such, give Execution of the Fens in Question, 2 Keb. 23. Downham and Walden.*

*Ejectment de 20 Villis & Terris in Ireland, De 20 Villis the Court conceived it well enough on 1 Cro. & Terris in 512. the Original Judgment being in C. B. and affirmed in B. R. there. 2 Keb. 745.*

*Ejectment of Two Mills, not saying what, good. 2 Keb. 875.*

*Ejectment of a Messuage includes a Garden. ; Keb. 44.*

*Ejectment de virgat' terræ, ill on General Verdict, being uncertain in every County; but the Plaintiff below might have released Damages as to that, but now it is too late. This was in Error of a Judgment in B. R. ; Keb. 450. Hall and Johnson.*

*Ejectment of Moor or Meadow, is ill. 3 Keb. Moor or Meadow. 529.*

*Ejectment lies not of Common or Piscary done; yet being after Verdict, it should be intended appurtenant, and so well enough: This was in Ejectment of a House and 40 Acres of Pasture. Keb. 738. Barton's Case.*

*Eject. de quadam Fabrica, Angl', a Smith's Forge, held good, per Chief Justice Wray. De quadam Fabrica, Angl', a Smith's Forge.*

*Demand of a Barony in Wales, is good; and by this an Hundred shall be recovered, per Justice Dodderidge in Stafford and Macdone's Case. De Barony.*

*Præcipe*

*De Dominio.*

*Præcipe* lies, *de Dominio in Wales*, by Chief Justice Dodderidge in the same Case; for it is a Lordship there, and a Lordship is a Manor.

*De Commote.*

*Præcipe* lies of a *Commote in Wales*; for before there were Shires, there were *Commotes*. *Commote* there is certainly known, and is in Nature of an Hundred. Per Justice Dodderidge, in the said Case of *Stafford and Macdone*. Tr. 18 Jac. B. R. to which Chief Justice Mountague agreed.

*De Salino.*

Demand of *uno Salino in Chester*, is good. 8 Ed. 3. 96. Yet it's not in the Register: By this the Nature and Quality of the Thing is described, and it's commonly known by this Name, by Chief Justice Mountague in the said Case.

*De Saliceto.*

So *de uno Saliceto*, is good; because it is well known by this Name.

*De Stagno.*

*De uno Stagno*, good; for it's well enough known by this Name.

*De Ling-ground and Heath-ground.*

Ling-ground and Heath-ground in Norfolk are demandable in Actions (per Justice Haughton in the said Case of *Stafford*) by such Names, and their Names sufficiently describe them there.

*De Tanto unius Messuagii quod stat supra Re-*

*pam, is ill. March's Rep. 97, 98.*

*De Rectoria.*

*Ejectione Firme* brought of the Rectory of D. and upon Not guilty pleaded, the Plaintiff proves Ejectment of the Glebe, but does not prove the Ejectment of the Tythes; it was held by the Court, That this is against the Plaintiff, in as much as a Rectory is an entire Thing, and therefore he ought to have added to it these Words, *Nec non de decem Acris Terræ, &c.* which in Verity comprehends the Glebe,

as he did in 11 Rep. 53. And for this, *D.* the Plaintiff, by the Opinion of the Court, was nonsuit. *Mic. 15 Car. Scaccio'.* The Lady Bea-cham's Case.

*A.* is dispossessed by *B.* of a Messuage; *B.* Ejection of makes a Lease for Life of the fore Part to *C.* Part of an and of the hinder Part to *D.* *A.* enters into House. the fore Part, and upon this brought *Ejectione Firme* against *C.* *De una Messuagio*, it's good, for he may not demand it by other Name; but Judgment shall be, *De Anteriori parte Domus.*

*Quære* If he ought not to declare, *De Ante-nore parte Domus*, or of such Roomis.

Error of a Judgment in Ejectment in the County Palatine of Durham, the Declaration was, *De Mineris Carbon'* in *G.* Object. This is very uncertain, for the Plaintiff ought to have named how many Mines; because in that Country several Men have several Mines in one Place. *Resp.* No greater Certainty is required, than that the Sheriff might know of what to deliver Possession, and the Words *de Mineris Carbon'* ascertain the Thing in Demand: The Exception is, That it is *de Mineris Carbon'*, if it had been *de Minera*, that is admitted to be certain enough. The Nature of the Thing will admit of no other Certainty, for a Mine of Coals runs through many Lands; and tho' it is but one Mine, yet when it is opened, they usually make several Shafts to let in the Air; and if the Plaintiff had declared but for one Mine, he could have recovered but one Shaft. *Per Cur'*, the Usage must support this Ejectment. It may be good by the Custom of the Country, and therefore

*De Mineris  
Carbon'.*

## The Law of Ejectments.

*De Pannagio.*

Judgment was affirmed. 4 Mod. 143. *Whittingham and Andrews.* Vid. *Showre* 364. *mesme Case. Pemble and Stern's Case,* 1 *Levinz* 212. The Ejectment was, *inter alia de Pannagio:* But Ejectment does not lie of that, for *Pannagio* is but a Privilege to take Pannage. 2. It was of the 4th Part of a Meadow, not shewing how many Acres the Meadow contained, and upon these Exceptions the Judgment was arrested.

*De quodam  
Loco vocat' le  
Vestry.*

Ejectment was, *De quodam Loco vocat' le Vestry,* is good enough.

Ejectment *de deux Closes vocat' Gabels*, upper and neither adjudged good, and 2 Cro. 654. Ejectment lies *de Domo*, altho' a *Præcipe* does not lie of it, and a *Close* called by a Name, and also the *Vestry* are Things more certain whereof to make Execution, than 100 Acres of Land lying *sparsim* in a common Field. 3 *Levinz* 97.

*Huchinson and Puller in Cam' Scac'.*

Ejectment, and declares of Two several Leases of the same Thing for the same Terms by several Persons.

Ejectment in *B. R.* the Plaintiff declares of a Lease, 1 Apr. 32 Car. 2. made by *A. B.* and *C.* of a Messuage, &c. in *C.* for 5 Years from the 30th Day of March then last past. Cumq; etiam, that the said *A.* and *B.* omitting *C.* postea scilicet eod' 1 Die Apr. demised to the Plaintiff pred' *Mess.* pro 5 ans from the said 30th Day of March, *virtute quarum quidem Dimissorum*, he entered and was possell'd till ousted by the Defendant, and on *Non culp'*, Verdict and Judgment *pro Quer.* in *B. R.* and upon this Error was brought in *Cam' Scacc'*, and assigned, that the Declaration was double, being

ing of Two Leases the same Day of the same Thing for the same Term, and he may not enter and be posses'd by both Leafes; but *per tot Cur'*, Judgment was affirmed.

1. If it be double, it's cured by the Verdict. But, 2. It's not double; for when the Three lease the Whole, and when after Two of them lease all the same Thing, this is a Surrender of the First Lease, and a new Lease of their Parts, and the old Lease continues as to the Third Part of him which does not join in the Second Lease, and so the Lessee entered and was possessed *per both Leafes*, *viz.* of the Third Part of C. by the First Lease, and of the Two Parts of A. and B. by the last Lease.  
 3. *Levitz* 117. *Turberville & alii versus Stockton.*

*Eject. Firme de Cottagio*, is good, for Cottagio is certain it self, it is a little House, and we ought not to be so precise in this as in a *Præcipe* in real Action. Adjudged in the same Case of *Hamond and Ireland*, p. 1650. *Intr. H.* 1649. *Rot. 818. & Accord' per Cur'* in *Rhethe-  
rick and Chappel.* 10 *Jac. B. R.*

*De Cottagio.*

Declaration of the Sixth Part of a *Mess.* in *De 6th Part Parochie St. Kath. Coleman-street and St. Gabriel of a Messuage Fenchurch-street*, and upon the Evidence it ap. in 2 Parishes. peared, that all the Messuage lay in the Parish of St. Kath. Coleman-street, if the Plaintiff hath failed to prove his Declaration: *Levitz* argued for Judgment *pro Quer'*; for if one bring an Ejectment of an Acre of Land in D. and S. and all lies in D. he shall recover; or if a Man bring Ejectment of an Acre of Land in D. and Part of it lies in S. he shall recover for such Part as lies in D. *Plo. 419. b.*: If a

G 2

Man

## The Law of Ejectments.

Where the Evidence doth not maintain the Issue.

*De 5 Clausis de Past. & Prati vocat' Faldouyne continen' decem acres;*

Man hath a Title to the Fourth Part of an Acre only, and he brings Ejectment for all the Acre, he shall recover the Fourth Part. *Cro. Car. 13.* But in this Case the greater Part of the Justices held, That here the Declaration being precisely of the said Part of an entire Thing, *viz.* a Messuage, That the Evidence doth not maintain it. *Vid. 44 Aff. 27.* *3 Levinz, Goodwin and Blackman.*

*Ejectment de 5 Clausis de Past. & Prati vocat' Faldouyne continen' decem acres;* after Verdict, it was moved in Arrest of Judgment, that it is too uncertain, not saying how many of the one, nor how many of the other. *1 Cro. 573. Martin versus Nicholas. 1 Cro. 29. and Saul's Case, 11 Rep. 55.* *Ejectment de Domo repositaria, Angl' a Ware-house, ill,* because not known by that Name in the Law. *Harper's Case, 11 Rep. Tel. 117. Owen 180. Stiles 202.*

*E contra.* It was urged, that it lies for a Close, if a Name be given to it. *3 Cro. 235. 2 Cro. 435. 3 Levin. 218. Sid. 295.* but *per Cur'* held to be ill in the principal Case, and Judgment was arrested. *Showre 338. Knight and Symms.*

*De communia Pastura of a Fair.*

Ejectment doth not lie *de communia Pastura*, nor of a Fair; but *de Manerio de B. cum pertin'*, if the Fair be appurtenant, is good.

*De Cottlage.*

Ejectment lies for a Cottlage. *4 Mod. 1. It lies de uno Stabulo, uno Pomario, uno Cottagio. 1 Lev. 58.*

*Of a Church.*

Ejectment lies of a Church, as *de una Domo, v cat'* the Parish Church of *D.*

A Rent granted with a Proviso, That if it  
be not paid then, that he may enter and re- Enter and re-  
tain the Land, *Quousq; &c.* the Grantee tain, *Quousq;*  
here hath such an Estate as will maintain an  
Ejectment. *1 Levinz 170.*

*Eject. Firme of an House, in Australi parte  
vici, Angl' the High-Street in Winchester, held  
good; alias by the Chief Justice, if it had  
been Ex australi parte vie, for then the South  
Part had been but a Boundary. Mere and  
French's Case. Tr. 1650. B. supra. Ejectione  
Firme de Domo Mansionali, was held good, be-  
cause [Mansionali] makes it certain; but the  
Court agreed, that if it had been De Domo ge-  
nerally, it had been ill, because this may be  
a Barn or Sheep-house.*

*Eject. Firme de Domo Fermario vocat' Holtga-  
mio, held good.*

Now as to Declarations in this Action, I shall lay  
down some General Rules.

1. The Plaintiff must declare on one Title  
only; and therefore in the Case of the Lord  
Chandois and Pitts, the Count was of Three  
several Leases of the Whole to the Defendant;  
the Council prayed that one *B.* may be made  
Defendant, and that the Plaintiff might elect  
to proceed on one only Title, which the  
Court granted, and said, altho' the Party  
may declare on several Leases, one at and  
another from such a Day, yet cannot declare  
on several Lessors. And the Court ordered  
the Plaintiff to elect one Title only. *Trin.  
22 Car. 2. B. R.*

2. In *Ejectione Firme* of a Close, the Quantity of them and their Nature ought to be expressed (*viz.*) Land, Meadow or Pasture. It's a sure Rule the Certainty of the Land ought to be described, and the Quality, 11 Rep. 55. *Savill's Case.*

3. In *Ejectione Firme*, Surplusage in the Count is not vicious. *Dyer* 304, 305.

4. If the Entry and Ejectment be supposed in the Declaration to be before the Commencement of the Lease, the Declaration is void. *Vide Postea.*

5. It must be alledged in what Vill the Tenements are. *Vide infra.*

6. The Plaintiff must make his Title truly. *Vide infra.*

The Entry to deliver Declarations in Ejectment, is not sufficient to avoid a Fine, without express Authority to enter to avoid the Fine; so was the Case reported, 2 & Saunders 319. Tenant for Life levies a Fine *sur Conscience de droit come ceo*, with Proclamation, and he in Reversion for Life, within Five Years after the Death of Tenant for Life, directs one to deliver a Declaration in Ejectment to the Tenant in Possession; this shall not amount to an Entry to avoid the Fine, tho' this was the Declaration which contained the Lease upon which the Ejectment was brought. *Keb. 555. Clerk and Pymell. Mic. 21 Car. 2. B. R.*

## DECLARATION.

In Ejectment in *B. C.* the Plaintiff there declares in the First Declaration, which is called the *Imparlane-Roll*, of a Lease made the 20th of *September* for Five Years then next ensuing; and after Imparlane upon the Issue-Roll (for there the Plaintiff useth to declare again after Imparlane) the Plaintiff declares of a Lease made the 30th of *January* the same Year, *Habend* for Five Years from the 20th of *December* before; and upon Issue, found *pro Quer'*. *Per Cur'*, it's erroneous, for he declared upon one Lease, and went to Issue upon another; for when a Lease is made the 30th of *January*, *Habend* from the 20th of *December* before, this is but a Lease in Interest till the 30th of *January*, and not before, and only in Computation from the 20th of *December*; and by the Prothonotaries, the Imparlane-Roll is the material Declaration, and if Variance be from it in Matter of Substance, this is not good nor amendable; tho' it was urged, That the last Declaration shall be taken as a new Declaration, without any Reference to the other, and then it shall be good. *1 Roll. Rep.* 448. *Millward and Watts.* *3 Bulstr.* 229. *Millward and Watts.* *Cro. Jac.* 415. *mesme Case.*

But in *Merril and Smith's Case*, *Cro. Jac.* 311. the First Declaration was, That *T. S.* the 25th of *March*, 6 *Jan.* let to the Plaintiff the Land, &c. for Seven Years, by Vertue whereof the Plaintiff entred and was possessed until the Defendant, *postea scil. Anno sexta supradict'*, entred and ejected him, so there is not any

Day mentioned. After Imparlane (as the Course in the Common Bench is) the Plaintiff made a Second Declaration, and there (without any Space made) the Ejectment is supposed to be the 26th of May Anno supradict<sup>t</sup>, and the Writ was brought on this Ejectment 7 Jac. The Defendant pleads *Non Culp<sup>r</sup>*, and found against him, and Judgment; and this was assigned for Error; *per Cur*r** the First Declaration is the principal and material Declaration, and the Second is but a Recital of the First. And if any Matter of Substance be omitted in the First, it cannot be aided and amended by the Second, for that begins with an *Alias prout patet*, so it is but a meer Recital; and therefore if the First be not good, tho' the Second be good, and he plead thereto, and the Trial is thereupon, yet the Judgment is erroneous: But as this Case is, the First Declaration is well enough, for he declares of a Lease the 25th of March, 6 Jac. which is the First Day of that Year, and the Declaration *quod postea scil<sup>r</sup>*, 6 Jac. the Defendant ejected him, is certain enough for the Year wherein he made the Ejectment; so it appears to be after the Lease made, and in the same Year 6 Jac. wherein the Ejectment was, and the Action is brought the 7 Jac. and the Ejectment being made between the making of the Lease and the Action brought, it's good enough, tho' there is not any certain Day alledged. *Cro. Jac. 311. Merril and Smith.*

Original in Ejectment was brought against H. and Three others, and the Plaintiff counts against Three of the Defendants, and not *Simul cum* against the Fourth, and Judgment was arrested for this. *2 Brownl. 129.* It's

It's a sure Rule, if the Entry and Ejectment be supposed in the Declaration to be before the Commencement of the Lease, the Declaration is void, as in *Powre and Hawkins's Case* cited, *Yelv.* 182. in *Davis's Case*.

Entry and  
Ejectment  
supposed be-  
fore the Com-  
mencement  
of the Lease.

The Plaintiff declares upon a Lease of *E. 27 April, Anno sexto*, and lays the Ejectment to be the 26th of *April, Anno sexto supradicto*, the Declaration was adjudged ill for this Cause: But the Court will and have help'd it by as favourable Construction as may be, as in the principal Case in *Yelverton*. The Plaintiff declares of a Lease made by *C.* the 6th of *May, Anno septimo*, of a Messuage, &c. and that the Plaintiff enter'd, and was possessed, *quousque postea*, the Defendant 18 die *ejusdem mensis Maii Anno sexto supradicti* ejected him; it was moved in Arrest of Judgment upon Verdict for the Defendant (to save Costs), that the Declaration was insufficient, for that this Action was grounded on two Things, (*viz.*) upon the Lease, and upon the Ejectment; and these two ought to be one after the other. And in this Case the Ejectment is supposed an Year before the Lease made, for the Lease is *Anno septimo*, and the Ejectment supposed to be made *Anno sexto*; yet the Declaration was adjudged good, and the Word [*sexti*] to be void; for the Day of the Ejectment being the 18th Day *ejusdem Mensis*, it shall be intended to be in the same Year in which the Lease is supposed to be made, *Brownl. p. 146. mesme Case*. So in *Adams and Goose's Case*, *Cro. Jac. 97.* In Ejectment the Plaintiff declared of a Lease the 6th of September, and that he was posses-

This Action  
is ground-  
ed on two  
Things, (*viz.*)  
the Lease, and  
the Eject-  
ment.

*i.d.*

## The Law of Ejectments.

fed, and that, *postea scilicet*, the 4th of September the Defendant ejected him; and by three Justices the Declaration was held good, and the 4th of September is impossible and repugnant, and the *Postea ejicit* is well enough. But in *Goodgaine's Case*, 1 *Siderf.* the Jury found that *J. N.* let to the Plaintiff for Five Years the 24th of June, Anno 1650, by Force whereof the Plaintiff enters the 24th of June, 1650. (the Lease being to commence à die *datus*) and that, *postea scilicet*, 24th of June, 1650. the Defendant ejected him; so that the Entry and Ejectment was supposed before the Lease, and Judgment was against the Plaintiff for this Defect. The Council of the contrary Side stood much upon the Case of *Adams and Goose*: But per *Cur'*, that Case differs from this; for in *Adams's Case* it appeared to be, that he enter'd by Force of the Lease, and was possessed thereof till he was ejected; but in this Case he enter'd the 24th of June, which was before the Lease commenced: And Judgment was given, 1. Because he said he enter'd the 24th of June, and so was a Disseisor. 2. Because the Declaration is contrary in it self. And *Clifford's Case*, *Dyer* 89. a. and *Green and Moody's Case* were cited. *Bridgman* said, he found no Reason for *Adams and Goose's Case*, *Re v. 182. Davis and Pardy*, *Cro Jac.* 97. *Adams and Goose*, *Siderf.* p. 8. *Goodgaine and Wakefield*.

The Entry and Ejectment being supposed after the *Postea*, (*viz.*) to be committed before the Lease shall be rejected, notwithstanding the Case in *Siderfin*, which contradicts

The Entry  
and Eject-  
ment suppo-  
sed after the  
*Postea*.

dicts the Case of *Adams and Goose in Crook*, which is the best Law.

If a Man deliver a Declaration in *Michaelmas Term*, and his Title doth not accrue till after *Michaelmas Term*, yet if he deliver a Declaration in *Hillary Term*, this is a Declaration *de novo*, for else it will be erroneous. So it is of Words spoken after the Term the Plaintiff hath declared. 27 Car. 2. *Hutchinson versus Tomes*, Rot. 1591.

Ejectione Firme of a Lease of H. P. 22d of May, 20 Jac. of, &c. *Hab' à primo die Maii & iisdem die & anno he ejected him, how constru-*  
*for three Years, virtute cuius the Lessee enter'd, and was possessed quousque postea scilicet iisdem die & anno, the Defendant ejected him. ed.*

It was assigned for Error, that *iisdem die, &c.* refers to the First Day of *May*, which is *ultimum antecedens*, and then the Ejectment is alledged before the Lease made, so the Declaration not good: But *per Cur'*, the Allegation of the First Day of *May* is but for the Beginning of the Term, and the Declaration being *quod virtute dimissionis*, he enter'd *postea iisdem die & anno, &c.* that refers to the Day of the Lease made, otherwise he cannot be possessed *virtute dimissionis*; and Judgment was affirmed in the *Exchequer-Chamber*. Cro. Jac. 662. *Rutter and Mills*.

The common Mistake has been (as is observable in our Book-Cases) in laying the Lease to be *à die datus*, and the Entry the same Day, which is a Disseisin not purged by the Commencement of the Lease; for where an Interest passeth [*a*] is *exclusive*, and so the Entry the same Day was before the Lease was to commence, and is a Disseisin;

*Virtute cuius.*

*Virtute cuius,  
how taken.*

seisin; but where no Interest passes, as in Cases of Obligations, *contra*. In *Douglas and Sbank's Case*, Cro. Eliz. 766. the Plaintiff declares of a Lease for Years, *Habend' à die datu\$, virtute cuius dimissionis* he enter'd, and was possessed until he was ejected by the Defendant. Not guilty pleaded. The Declaration is ill, because the Time of the Entry is not alledged; for if he entred at the Day of the Demise, he is a Disseisor, and the Action not maintainable. The strongest shall be taken against the Plaintiff, (*viz.*) that he entred the Day of the Lease made, and that is not supplied by the Words [*virtute cuius*]; but no Judgment was given, because **Two against Two**. Yet in *Dyer* 89. in *Margine*, it is said, because he did not aver *in factu* that he enter'd after the Day of the Date, (for the Lease doth not commence till the next Day,) that Judgment was arrested, *absente Popham*. And another Case is there cited, *M. 44*, or *42 El. B. R.* in *Ejectione Firme* upon a Lease made to commence at *Michaelmas*, and the Plaintiff declares, that he *virtute dimissionis*, &c. and it was moved in Arrest of Judgment, because he saith not he enter'd after *Michaelmas*. And *Dyer* 89. was cited, and *Gaudy* and *Fenner* held it ill; *per Popham*, it is aided by the Statute of *Feofails*, because it is Form only, and the Demise is the Substance; and *per Popham*, after *Michaelmas* he is Termor by the Continuance of the Possession, *Quod Fenner and Gaudy negaverunt*. But in *Wakely and Warner's Case* Ejectment was brought in *Ireland*, and Judgment *pro Querente*. It was assigned for Error,

ror, that the Plaintiff shews a Lease made to him to commence at a Day to come, *virtute cujus* he enter'd, and was possessed until ejected by the Defendant, and shews not when he enter'd, either after or before the Day at which the Lease commenced : *Sed non allocatur*, because he said *virtute cujus, &c.* But by *Lea*, Chief Justice, if he had said *prætextu cujus*, it had been otherwise. *Moor 466.*

Where a Declaration in Ejectment, for the Purpose, is made of *Easter Term*, and the Demise is laid after the End of *Easter Term*, and before the *Essoin-Day of Trinity Term*, and also delivered before the *Essoin-Day of* Where the  
Demise is  
laid before  
the Time in  
the Declara-  
tion.

*Trinity Term* to the Tenant in Possession ; yet this shall be good, though the Demise is laid after *Easter Term*, because when the Tenant in Possession appears, he must be made a Defendant, and accept a Declaration of *Trinity Term*, and plead thereunto Not guilty, and at the Trial confess Lease, Entry, and Ouster, otherwise there will be Judgment against the casual Ejector. So that when the Declaration, to which the Tenant is made a Defendant, is made of *Trinity Term*, that is then after the Demise, and so it is well.

Ejectment of a Lease made the 12th of December, *habend à primo die*. On Not guilty, the Jury find a Lease made in *bæc verba*, which was dated *primo Decemb'*, *Habend'* from henceforth, but delivered the 12th of December ; and the Question was, Whether this be according to the Declaration ? It was objected, That from the Day of the Date, and from

## The Law of Ejectments.

*Habend' à die  
datus expoun-  
ded.*

from henceforth, are several Commencements, for the one begins the Day it was sealed, the other the Day after; but *per Cur'*, they are all one, being a Computation of Time from the Time past, and both shall be pleaded to begin from the Day of the Date, when the Lease is afterward sealed another Day. But if he declares of a Lease the First of December, *Habend' à die datus*, the Ejectment cannot be alledged the same Day; but if the Lease be made the First of December, *habend'* henceforth, the Ejectment may be alledged the same Day. So was the Case of Osborn and Ryder: Ejectment on a Lease made 1 Jan. 3 Jac. *Habend' à die datus*, and the Ejectment was the same Day, and ruled to be good, though the *Habend'* is as much as to say, from the Day of the Date: But *per Cur'*, the Date is the Time of the Delivery, and it differs from the Day of the Date; wherefore the Ejectment alledged *postea* the same Day is good enough. *Cro. Jac.* p. 258. *Lluellyn and Williams*, and p. 135. *Osborn and Ryder*.

*Ejectione Firme of a Lease dated the 6th of December, 17 Jac. Hab' à die datus*, upon Evidence the Lease was shewed, and was dated the 6th of December, 19 Jac. *Hab' à die confectionis*, the Plaintiff was nonsuited. *Cro. Jac. Scavage's Case*.

The Plaintiff declares upon a Lease made the 10th Day of October, *Habend'* from the 20th Day of November for five Years; the Question was upon a special Verdict, Whether this was a good Lease or not? Judgment was arrested. It shall not begin from the Time

Time of the Delivery; but it's an uncertain Limitation, and cannot be known what Number he meant, last past, or next ensuing. But the Law will eject an impossible Limitation, as from the 31st of September, because it cannot be any Part of the Parties Agreement. The Declaration was, *Quod cum J. H.* No Day of by his Indenture bearing dated the 20th of May, 32 Eliz. had let to him an House, and shewed not when the Lease was made; for he doth not shew any Day of the Delivery. *Per Cur'*, it's good, for it shall be intended to be delivered at the Day of the Date. *Mod. Rep.* p. 180. 3 Leon. p. 266. *Knivet and Cope.*

In Ejectment of the Manor of D. containing 250 Acres, be it more or less, with Letters of Attorney, reciting, Whereas J. the Lessor had made a Lease of a Manor containing 250 Acres, and Authority to make Livery according to the recited Lease. *Per Cur'*, the Variance is fatal, and the Plaintiff was nonsuited. 3 Keb. 691. *Smith and Talbot, Mic. 18 Car. 2.*

Plaintiff declares, That P.C. by Indenture apud S. let unto him an House, and 20 Acres of Land by the Name of all the Tenements in S. After Verdict Judgment was arrested, because it was not alledged in what Vill the Tenements are, and the naming of the Vill in the *Pernomen* is not material. *Cro. El. 822. Pernomen.* Gray and Chapman.

50 Hobert 89. Rich and Shere. Declaration was, That at E. in Com' predict', he did demise One Messuage, Four Gardens, Two hundred Acres of Land, Eighty Acres of Pasture called East-Dizard in the said County. On Not

Uncertain  
Limitation  
of the Com-  
mencement  
of the Lease.

## The Law of Ejectments.

Not guilty, the Plaintiff had Judgment. It was Error, because the Plaintiff in his Declaration did not shew in what Town, Parish, Hamlet, or Place, the said Tenement called *East-Dizard* lay; and Judgment was reversed in the *Exchequer-Chamber*.

Declaration was of a Lease of Serjeant *Hele*, That he the 16th of *January*, 44 *Eliz.*, by Indenture dated the 2d of *January*, demised, &c. It was moved, that the Declaration was not good, because it is that he demised the 16th of *January* by Indenture, dated the 2d of *January*, and he does not say *primo delibat* the 16th of *January*; for otherwise it shall be intended to be delivered the Day it bears date. But *per Cur'*, it's good; for tho' a Deed shall be intended to be delivered the Days it bears Date, unless the contrary be shewed; yet when it's said, he demised such a Day by Indenture dated such a Day before, it must be necessarily intended it was not delivered the same Day it bears date, but upon the Day of the Demise, as it is alledged, *Cro. Eliz. 890. House and Laxton, Cro. Eliz. p. 773. Hall and Denby.*

And the Verdict often aids and intends, that it was delivered the same Day it bears Date, as in *Heaton and Hurleston's Case*. The Declaration was, Whereas *J. S.* by Indenture the 9th of *June*, 19 *Fac. dimisit, &c.* *Habend terminum prædictum à die datus sigillationis Indenturæ prædictæ* for three Years; *virtute ejus* the Plaintiff the 10th of *June*, 19 *Fac.* enter'd, and was possessed until, &c. and Verdict *pro Quer'* on Not guilty. *Per Cur'*, When the Verdict has found him guilty upon

When the  
Lease shall  
be intended  
to be deliv-  
ered on the  
Day of the  
Demise, and  
not of the  
Date.

upon the Declaration, and the Ejectment is alledged according to the Declaration, it may well be intended that the Indenture bore Date, and was sealed and delivered the same Day mentioned in the Declaration of the Lease; though it was objected, That neither the Day of the Date, nor of the Sealing and Delivery of the Indenture, are mentioned, and so the Declaration uncertain. But Judgment *pro Querente.* Cro. Jac. 646. *Heaton* and *Hurleston.*

Now in *Wakely* and *Warren's* Case, though the Plaintiff does not shew in his Declaration when he enter'd, either after or before the Day on which the Lease commenced, yet it's good enough; because he saith, the Lease to him made was to commence at a Day to come, *virtute cuius* he enter'd, and was possessed until, &c. *Aliter* had it been, if he had said *pretextu cuius.* 2 Rolls Rep. 466. *Wakely and Warren.*

Now the Judges favour Declarations in *Ventr. 136.* *Ejectment*, as may be seen, *& pretextu cuius*, *he enter'd; the Difference between them.* The Plaintiff declares in Ejectment, That *f. s.* demised to him *per quoddam scriptum Obligatorium, &c.* *Habend' à die datus Indenturæ prædictæ.* *Per Cur'*, The Writing shall them. be intended an Indenture, though it be called *Scriptum Obligatorium*, and every Deed obligeth; but if it shall not be intended Indented, then the Lease shall begin presently, as if it had been made from the 4th of Sept.

But a Declaration was of a Lease, *Habend' à die datus Indenturæ prædictæ*, and does not speak of any Indenture before; and the Declaration was adjudged naught. But *Ejectione Firme* of a Lease made the 20th of *August,* *Habend'*

## The Law of Ejectments.

*Habend' from Michaelmas then last past ante datum hujus Indenturæ, and neither shewed the Indenture nor the Date thereof; and per Cur', it's well enough. The Addition, ante datum Indenturæ, shall be void, the other being good, and the Beginning of the Lease appearing certain enough.* *Hetley 63. Brady and Johnson. Cro. Eliz. 606. Darrel and Middleton.*

A special Verdict in Ejectment was found in *Ireland*, and Judgment there pro Quer'. Error was brought in *B. R.* in *England*: The Declaration was, That the Plaintiff declared upon a Demise made 12 Jun', &c. *Habend' à predicto duodecimo die Junii,* (which must be the 13th Day of the same Month) *usq; &c.* *Virtute cuius quidem dimissionis he enter'd, &c.* and that the Defendant, *postea scilt' eod' duodecimo die Junii,* did eject him, &c. So that it appears upon the Face of the Declaration, that the Defendant entered before the Plaintiff had a Title, for the Lease commenced the 13th of June, and the Entry was on the 12th of that Month. And it's the same Point as *Siderfin* 8. 2*Croke* 69. Lease was made the 24th of June for five Years, *Habend' à die datus,* which must be the 25th, by Virtue whereof the Plaintiff enter'd, and that the Defendant, *postea scilt' 24 June,* did eject him, which must be before the Commencement of the Lease.

*Per Cur', The Plaintiff enter'd as a Disseisor by his own shewing, and thereupon Judgment was reversed.* 3*Mod.* 198. *Evans and Crocker.*

*Ejectione Firme* of a Lease made the 21<sup>st</sup> of October, 4 Jac. & quod postea scilicet eodem 21 die Octob. Anno tertio supradicto, he ejected him: And the Addition of a Year, which was not mentioned before, and which is repugnant to that Day which was mentioned, is idle, and shall be taken for null; *Et postea* the same Day shall be good enough. *Cro. Jac. 154. Brigate and Short.*

Error was assigned, for that the Plaintiff did count of the Lease of the fourth Part of an House in N. in four Parts to be divided, by Force of which he enter'd in *Tenementum prædictum*, and was *inde possessionat* till the Defendant did eject him *de Tenementis prædictis*, whereas he ought to suppose his Entry into the Fourth Part, and the Ejectment of the Fourth Part, *sed non alloc'*; for the Entry and Ejectment supposed *de Tenementis prædictis* shall not be intended of the intire Tene- ment, but of the Fourth Part of the Housle, according to his Declaration. *Cro. Eliz. 286. Rawson and Mainard.*

Ejectment for Tythes, not saying by Deed, Judgment was reversed. *2 Keb. 376. Angell and Roff.*

The Declaration was of several Messuages in the several Parishes of St. Michael, St. James, St. Peter, and St. Paul, and that Part of the Premisses lay in the Parishes of St. Peter and St. Paul; but that there is no Parish called the Parish of St. Peter, nor none called the Parish of St. Paul. *Per Cur'*, The Copula- tion [Ec] shall be referred to that which is real, and hath Existence, *ut res magis valeat*, to make them both one Parish; and the

## The Law of Ejectments.

Words [several Parishes] is supplied by the other Parishes aforesigned. *Hardr.* 336. *Ingleton* and *Wakeman*.

### *By Coheirs or Coparceners:*

*Quod dimiserunt.*

Declaration by Coparceners, *Quod dimiserunt* is good; therefore *Molliner* and *Robinson's Case*, *Moor* 682. where the Lease was made by Two Coparceners, and it was declared *Quod dimiserunt*: To which it was excepted, that the Lease is the several Lease of each of them for his Moiety, which was there ruled a good Exception, is not Law. 2 *Brownlow* 207. *Cro. Eliz.* 615. 2 *Keb.* 192. *Moor* 682.

*Coheirs declare by the Lessee of a Lessee, and why.*

And now Ejectments in such Cases are by the Lessee of a Lessee of the whole by many Coheirs, which is by reason of the Uncertainty of the Part claimed by the Lessors. And *per Cur'*, a Lease of all Parts warrants the Lease of all. 2 *Keb.* 700.

### *By Tenants in Common.*

If Two Tenants in common join in a Lease for Years to bring Ejectment, and Count *Quod dimisissent*, it's naught; for it is a several Lease of their Moieties, and they must declare, *Quod cum* one of them demised the one Moiety, and the other the other Moiety. 1 *Brownl.* 13. *Cr. Jac.* 166. *Mantley's Case*.

If one Tenant in Common take the whole Profit, the other has no Remedy by Law against him, for the taking the whole Profits is no Ejectment; but if he drive away the Cattle of the other Tenant in Common off the

the Land, or not suffer him to enter and occupy the Land, this is an Expulsion, and he may have *Ejectione Firme* for the one Moiety, and recover Damages for the Entry, but not for the mean Profits. *I Instit. p. 199. b.*

## By Baron and Feme.

The Plaintiff declares of a Lease made to him by Baron and Feme generally, and does not alledge it to be by Deed: It was a great Question in our Books, whether this be good or not; but now it is ruled to be good by many Precedents, *2 Rep. 61. Wiscot's Case.*

## By Jointenants.

C. and R. and W. Daughter to R. are Jointenants for Years; W. lets her Part to C. and C. and R. join in this Lease of the entire Land to the Plaintiff for three Years. *Popham and Fenner* held, That that Lease well warrants the Declaration; for upon the Matter they both let the entire, and upon this general Count it is good. *Telverton and Williams e contra*, because the Count supposeth they both let the Entire as Jointenants; for so it is intended by the general Count, which appears to be false, for they two let two Parts jointly, and the one of them having a third Part as Tenant in Common, lets that only, and so the Declaration ought to have shewed the Truth and the special Matter. And because it is difficult, they use in such Case to make a Lease, and the Lessee to make a second Lease, and the second Lessee to declare

Two as Jointenants, and one as Tenant in Common, demise the Commons, in such Cases how to declare.

generally; and so all the Matter shall come in Evidence. *Fleming*, before whom it was tried by *Nisi prius*, over-ruled it, that this Declaration was well maintained by the Lease, and the Jury gave a Verdict according to his Opinion. *Cro. Jac. p. 83. Jordan and Steere.*

*Upon a Lease by Tenant for Life, and him in Remainder.*

Verdict.

*A.* Tenant for Life, Remainder to *B.* in Fee, they both by Indenture join in a Lease to the Plaintiff. *Per Cur'*, this is the Lease of *A.* during his Life, the Confirmation of *B.* and after the Death of *A.* it is the Lease of *B.* and the Confirmation of *A.* And because the Plaintiff in Ejectment had counted of a Joint-Lease by *A.* and *B.* it was adjudged against him. *6 Rep. 15. Treport's Case.*

So is the Case in *Popbam*, p. 57. upon a Demise by *Dorothy Pool* and *Robert Smith*, it was thus on a special Verdict: *Dorothy* was Tenant for Life, Remainder to *Smith* in Fee, and they being so seised, made the Lease in the Declaration. *Per Cur'*, the Lease found *per* the Verdict doth not warrant the Lease alledged in the Declaration; for during *Dorothy's* Life it is her Demise, and not the Demise of *Smith*, but as his Confirmation for that Time, for he had nothing to do to meddle with the Land during the Life of *Dorothy*, and after her Death it shall be said to be the Demise of *Smith*, and not before. *Popb. 57. King and Berry.*

By

## By a Corporation.

The Plaintiff declares upon a Lease to him made by the President, Fellows, and Scholars of St. John's College, Oxon, and in the Conclusion he doth not say, *Hic in Curia prolat'*. *Per Williams*, it is not good. The Ejectment-Lease being made by a Corporation, they sealed the Lease, and delivered it by their Attorney, having a Letter of Attorney from them to deliver the same; they cannot do this in any other Manner than by their Attorney. *1 Bulstr. 119. Lord Norris's Case.*

*Hill. 36 Eliz. Carter and Cromwell, in Ejctione Firme*, the Plaintiff counts *per Lease* made by the Warden of All-Souls College in Oxon. And Exception was taken, because the Name of *Baptism* of the Warden was omitted, but adjudged there need not; the Difference is where a Corporation is sole Person, as Bishop there may be his Name; *Aliter Aggregate. Dyer 86. Marg.*

Ejectment was brought on a Demise of a Corporation, not saying by Deed. *Per Cur'*, Judgment shall not be arrested for this on Judgment by *cognovit Actionem* at the Assizes, but it shall be intended after this as well as after a Verdict.

## Upon a Lease by Commissioners of Bankrupt.

Commissioners of Bankrupt had assigned the Land in Question to the Lessor of the Plaintiff, which Indenture was afterwards inrolled; but the Declaration was of a Demise

## The Law of Ejectments.

mise made after the Indenture, and before the Inrolment: And whether that Demise were sufficient to entitle the Lessor of the Plaintiff, was the Question in *Perry and Bowe's Case*. *Per Cur'*, it is not sufficient. *Vide le Case*, 2 *Ventr.* 360. *Perry and Bower*.

*By Copyholder.*

If a Lease be found made by a Guardian or Copyholder, such a Lease will maintain the Declaration, though their Leases are void against the Lord and Infant. *Hardr.* 330. *Wheeler's Case*.

*Vide supra, Tit. Who shall have Ejectione Fine.*

*By Administrator.*

He ought to shew how the Archbishop granted it, either as Ordinary, or by his Prerogative; and therefore Exception was taken to a Declaration in Ejectment, because the Plaintiff conveyed his Interest by an Administrator of all the Goods of the Lessee in *Sussex and Kent*, but shews not how the Archbishop granted it, either as Ordinary, or by his Prerogative. And this was held by the Court to be a material Exception. But because all the Precedents in *B. R.* and *B. C.* were so in general, without shewing how, and because they would not change Precedents, they disallowed the Exception. *Cro. Eliz.* p. 6. *Dorrel and Collins*.

In *Gillam and Lovelace's Case* it was moved in Arrest of Judgment, That the Declaration (brought

Precedents  
not to be  
changed.

(brought by Administratrix) was not good; because the granting forth Letters of Administration was in this Manner, (*viz.*) *Administratio commissa fuit querenti per William Lewin Vicarium generalem in spiritualibus Episc. Rot.* without averring, that at the Time of the granting Letters of Administration, the Bishop was in *remotis agendis*, for a Bishop present in *England* cannot have *Vicarium*. But *per Cur'*, the Vicar-General in *Spiritualibus* amounts to a Chancellor; for in the Truth, a Chancellor is Vicar-General to the Bishop. *Vicar-Gene-*

2. The Declaration is not *Episcop. Roff. loci i. ral.*

*lius ordinarii*. But *per Cur'*, all Precedents are so; and in a Declaration such Allegation needs not, but by way of Bar it is necessary.

3. The Plaintiff declares of Ejectment, and also *quod bona & catalla ibid' invent' cepit*; and in the Verdict the Damages for the Ejectment and Goods are entirely taxed *Quære de hoc.*

1 *Leon.* p. 312. *Gilham and Lovelace.*

*Ejectione Firme* was brought of a Lease of Tythes, and shews not that it was by Deed, and ruled to be ill, because Tythes cannot pass without Deed. *Cro. Jac. 613. Swadling and Peers.*

## C H A P. VII.

Where in the Declaration a Life must be averred, and where it need not. Of Delivery of Declarations at or after the Essoin-Day. Declarations, when to be enter'd, as of the same Term where the Copies need not to be paid for. Declarations, when amendable or not. Of expressing the Vills where the Lands lie. Of the Pernomen. Declaration need not be of more Acres than he was ejected out of. Of the Forms of the Declaration; Vi & Armis omitted; Extratenet omitted. The Precedent of Declarations in C. B. in B. R. in Scaccario. The Indorsement on the Copy to be left with the Tenant, and what the Tenant is to do thereupon. The Rule for confessing Lease, Entry, and Ouster, in B. C. and in B. R. The Form of an Affidavit in Ejectment to move for Judgment against the casual Ejector.

**I**F one do declare upon a Lease in *Ejectione Firme*, and that by Vertue of that Lease he was in Possession of the Lands thereby let to him, until that he was ejected by the Defendant; it is supposed that the Lessor, who made the Lease to him, was alive at the Time of the Action brought. *Pract. Reg. 110.*

The Plaintiff in Ejectment declared of a Lease for three Years, if the Wife of the Plaintiff shall so long live, and does not shew that the Wife is yet in Life: Yet *per Cur'*, this

his being after a Verdict, is made good by the Stat. 21 Jac. of Amendments, after Examination by the Sheriff. And in Arundel's Case, in Ejectment the Plaintiff declares that the Lady Morley being only Tenant for Life, made a Lease to him for three Years, if she should so long live; *virtute cuius intravit & fuit possessionat* until the Defendant enter'd upon him, & illum a firma sua predicta termino suo nondum finito extratenet, &c. and he did not aver the Life of the Lady Morley. But per Cur', this amounts to an Averment, for he saith his Term is not yet ended, which implies she is alive, and the Years not expired; and this was after a Verdict. But had it been demurred to, it had been more ambiguous. So Dyer 304. in *Ejectione Firmae* on a Lease, his Supposition that the Person *ad hoc seistus existit*, implies his Life. Siderfin, p. 61. Palmer Rep. 267, 268. Arundel and Mead, Cro. Jac. mesme Case, 2 Brownl. 165.

It was the Opinion of the Court in Cro. Eliz. p. 18. Higgins and Grant's Case, That if in Ejectment one declares of a Lease by a Person, he ought to aver his Life, for by his Death his Lease is void; but it's now otherwise. 2 Bulstr. 79. Cro. Eliz. 18. Higgins and Grant.

#### Of the Delivery of Declarations, Filing and Entry.

The Court, in Car. 2. Snow and Cooler's Case, upon Motion, ordered, That a new Declaration delivered on the Essoin-Day should be sufficient, (the old one being delivered

A new Decla.  
ration deli-  
vered on the  
Essoin-Day.

livered before) the Lessee dying, and the Name was changed, there being sufficient Notice; and this being the Act of God, shall not Prejudice. *1 Keb. 755.*

The Declaration is delivered after the Essoin-Day, and the Consequence.

What Day the Bill was filled, is examinable whether after the Day of the Lease, tho' it's the same Term.

If the Declaration in Ejectment be delivered after the Essoin-Day, it is but enter'd of that Term (and not of the Term before) and the Plaintiff in such Case cannot have Judgment the same Term; but if he doth not move the following Term to have Judgment, (especially if any Assizes intervene) he cannot have it without new Notice left at the House of the Defendant, and the Default made at first. *1 Keb. 721. Bluet's Case.*

If the Declaration in Ejectment be of Michaelmas Term, which relates to the first Day of the Term, yet it's a Matter of Evidence, and examinable what Day the Bill was filed; and if it was after the Day of the Lease, all is well. On a special Verdict it was moved for the Defendant, that the Declaration was in Michaelmas Term, *2 Jac. 2.* and the Demise is laid to be the 30th of October, *2 Jac. 2.* and so after the Term began. Note, The Declaration cited an Original, and an Original was produced, *Teste 2 Nov.* which was after the Demise; and the Prothonotaries informed the Court, That this was frequently allowed, and that no Memorandums of the Originals bearing Teste within the Term, was used to be made upon the Record. *Sid. p. 432. Prodger's Case. 2 Vent. Tonstale and Broad.*

It is the Course of the Court in Ejectment, If the Owner of the Lands comes in and prays

to

to be Defendant, the Declaration shall be enter'd as of this Term, altho' it were of the last Term, against the casual Ejector; but yet being by Favour of the Court admitted, he shall have no new Imparlace besides that which the casual Ejector had. And by *Hide*, there is Difference between the Tenant in Possession, who is Defendant *ex debito* on his Prayer; *contra* of *J. S.* who is only concerned in Title. *1 Keb. 706. Roch and Plumpton.*

If the Declaration filed be paid for, they need not pay for the Copies, and so a Trial at Bar shall not be hinder'd for want of Payment of the Copies. *2 Keb. 805.*

I find a Rule of Court to change the Year, thus :

*ff. Mich. 13 Car. Ordinac<sup>e</sup> est per Cu-  
riam nono die Octob<sup>r</sup> qd quer narrati-  
onem suam in intrat' inter par-  
tes de Termino St. Trin<sup>i</sup> ult in-  
trat in Anno dimission<sup>m</sup> emendabit,  
Et ubi per misprisionem Clerici al-  
legavit dimission<sup>m</sup> fieri duodecimo  
die Aprilis Anno undecimo Caroli  
fieri debuit Anno duodecimo & quer  
solveret Def' miss per Magistrum  
Gulston taxand<sup>m</sup> pro emendatione  
illa ex motione Magistri Boon.*

Lessee for three Years makes a Lease for five Years in Ejectment to try the Title, and the Jury on special Verdict doubt whether the Defendant be guilty for 3 or 5 Years. *Per Cur'*, the Declaration is ill, and the Plaintiff can have no Judgment. *Per Hale*, the Lease

If the Owner  
prays to be  
made Defen-  
dant, the De-  
claration to  
be enter'd as  
of the same  
Term, but  
no new Im-  
parlace.

Where Co-  
pies of the  
Declaration  
need not be  
paid for.

**Declaration.** Lease is good only for three Years, and the Defendant shall be guilty for no more, else the Plaintiff would recover *Terminum predictum*, which is Five Years, but no Judgment can be for three Years, being not waranted by the Declaration. *Trin. 27 Car. 2. B. R. Rowe and Williamson.*

*Mr. Levett's Case of the Inner-Temple.*

*Sir Roger Puleston Kt. Plaintiff.*

*Sir Peter Warburton, and others, Defendants.*

*Ejectment upon the Demise of John Levett and his Wife, wherein the Plaintiff declares, That John Levett, and Margaret his Wife, the 10th of April, 1697. demised to the Plaintiff, Habend' from the 25th Day of March then last past for five Years.*

**Argument.**  
Argued at  
the King's-  
Bench before  
Lord Chief  
Justice Holt,  
&c.

THIS was tried at the Bar, and a Verdict for the Plaintiff; and the Defendants have moved in Arrest of Judgment, for that the Demise is laid the 10th of April, 1697. which is not yet come, whereas it should be 1696, which the Plaintiff hath moved to amend, and the same ought to be amended, &c. for these Reasons, wherein I shall only apply my self to the Stat. 16 & 17 Car. 2. cap. 8. which I humbly conceive hath not been sufficiently spoken to in this Matter, which saith, That no Judgments shall be stay'd or reversed after Verdict for any Mistake in the Christian Name, Day, Month, or Year, by the Clerk, where the right

Name, Surname, Day, Month, or Year, in any Writ, Roll, Plaintiff, or Record, preceding, or in the same Roll or Record are once rightly named, but that all such Omissions, Variations, Defects, and all other Matters of the like Nature, being not against the Right of the Matter of Suit, nor whereby the Issue or Trial are altered, shall be amended by the Records.

That we are within the Benefit of this Statute, I shall offer this to your Lordship.

The Declaration against the casual Ejector delivered to the Tenants in the Country was right, that expressing the Demise to be the 10th of April, 1696. which ought to have been the Time mentioned in this Declaration, for all the Mistake was only betwixt *septimo* & *sexto*; and there is an Imparlane enter'd on the Roll in Easter Term last against the casual Ejector, which is right.

As in all Actions brought by Bill, the usual Method of Proceeding, is to file the Bill or Declaration in the Office; and as all Defects on the Roll are amendable by that, so this being brought by Original instead of Filing a Bill in the Office, an Imparlane is enter'd on the Roll, and the Method of Proceeding is in the same Manner as in the Common Pleas, the Issue is as much amendable by the Imparlane-Roll as it would have been by the Bill, if the Action had been brought by Bill.

The Objection made to this, is, That *Palestone* and though Tenants in Possession being not all *Goodluck*. duly served in the Country, the Tenants agreed to appear so as the Plaintiff would consent

consent to try it at the Bar, and that thereupon there was a new Declaration delivered, which had this Mistake, and seems to infer, that the former Declaration was waived, and this was altogether a new Proceeding, wherein the Court was misinformed; for there was no new Declaration delivered, and that which the Defendants produced, was a Copy of the Issue only, and proved nothing but that there was a Mistake, which appears by the Roll, and is admitted by the Plaintiff, otherwise we need not this Motion.

Now, my Lord, that the Defendants Appearance was to the Declaration delivered in the Country, is plain; for there was no other Declaration delivered, nor was there in any other for them to appeal to. Besides, it appears by the Rule wherein it is written *Pulestone* and *Goodluck*, and under that the now Defendants shall be made Defendants in the Room of *Goodluck*, and shall confess Lease, Entry and Ouster, for the Lands in that Declaration mentioned, and shall receive a Declaration, and plead the general Issue, and insist upon the Title only; and that if the Plaintiff shall become nonsuit for Default of the Defendants confessing Lease, Entry, and Ouster, then that Judgment shall be enter'd against the Defendant *Goodluck*, &c.

Now, my Lord, I would know what Declaration the Defendants were to appear to; it must be a Declaration against *Goodluck*: And what Lease the Defendants were to confess; it must be the Lease mentioned in

the Declaration against *Goodluck*; and what Judgment the Plaintiffs were to have, if the Defendants did not confess Lease, Entry and Ouster; it must likewise be upon the Declaration against *Goodluck*.

Now, My Lord, if the Defendants will shew a Declaration that was delivered them against *Goodluck*, wherein there was this Mistake, it would be hard upon us; but if they cannot, then the Declaration delivered against *Goodluck* is right, and the Demise they are obliged to confess, is the Demise in that Declaration, and only mistaken by the Clerk's transcribing it.

Now, My Lord, if the Defendants have confessed a good and right Demise, and this hath been tried, then it would be the greatest Hardship in the World, if the Court should not let the Plaintiff have the Benefit thereof; and it is plain, that the Demise the Defendants are by Rule to confess, is the Demise in the Declaration against *Goodluck*. So that, My Lord, if there were no Statute to help it, I take it with Submission, the Court having tried the Fact, ought to make the Record according to the Fact they have tried.

As to their consenting to appear for several of the Tenants that were not duly served, on Condition the Plaintiff would try it at Bar; My Lord, That is an Argument against them, and brings us within the Benefit of the Case betwixt *Crawley* and *Parr*, where there was a Judgment in Ejectment by Confession, and the Demise laid after the Judgment, and amended after a Writ of Error brought, because it was a Judgment by Warrant of Attorney;

ney; for it should not be supposed that the Defendant gave a Warrant of Attorney to confess a void Judgment.

Now, My Lord, the Defendant's consenting to appear, shall never be intended to avoid Declaration, but to a good Declaration in order to a fair Trial. And, My Lord, we are the more intitled to the Benefit of it, because we are Purchasors, for we give a Consideration for it, *viz.* agreed to try it at Bar, and they themselves opened it so.

As to what was objected, That when the Tenants have appeared to this Declaration in Ejectment, and are made Defendants, it is a new Action, and that the Declaration against the casual Ejector is rejected, and that therefore this Defect cannot be amended, though right in the Declaration against the casual Ejector.

I give this Answer, That the Declaration against this casual Ejector is not rejected, but is by the common Rule in Ejectment made Part of the Cause, insomuch that if the Plaintiff be nonsuited, he shall have his Judgment upon that Declaration, and the Return of the *Postea* is Warrant for that Judgment; so that by the common Rule in Ejectment they are so tied together, that it is all but one Action, and the now Defendants are to stand in the casual Ejector's Place. But, My Lord, the Words of the Statute are not so strict, which are in any Proceedings precedent. Now, My Lord, the Declaration in Ejectment is a Proceeding, and it is Precedent, and it is within the equitable Meaning of the Statute, which intends all Amendments that

that are by Neglect of the Clerk, if it appears that they are right in any of the Proceedings, and for that End a Philizer's Note, tho' no Part of the Record, hath been sufficient to amend by.

And, My Lord, the same may be said when the Defendant is arrested by a *Lat. de Placito transgr'*, and the Plaintiff declares in Debt or Case, and mistakes the Christian Name, Surname, whether shall it be amended by the *Lat.* and whether the *Lat.* shall be looked upon to be a Proceeding precedent to the Declaration, because in another Action, and so it would be if a Man be arrested *de Placito transgr'*, *ac etiam Bill'*, and the Plaintiff declares in Debt only, this is likewise departing from the Writ; but these are warranted by the Practice and Course of the Court, these Processes being made use of only to force an Appearance; and the Plaintiff may then declare in case of Trespass or Debt, as he sees good. Now, My Lord, Declarations in Ejectment are the same Thing, because only made use of to force an Appearance, and are by the common Rule in Ejectment become no Part of the same Action than a *Lat.* is. But this, My Lord, we have a full Answer to; for the Declaration against the now Defendant is entered on the Roll, and is right.

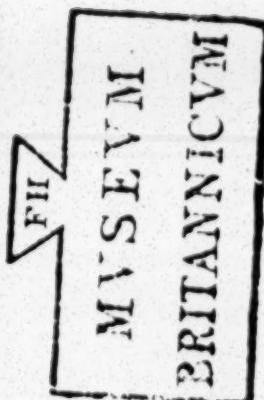
But with Submission, My Lord, the Declaration is sufficient to warrant its own Amendment, it being by Original, viz. *Que Johann' Levett & Maria eidem Rogero dimiser' ad terminum qui nondum præteriit, intraver' & ipsum*

*a firma sua predicta ejecer'. Now, My Lord,* the Count may be amended by the Original, which is, That the Plaintiff's Lessors had before that Time demised the Premisses to the Plaintiff for a Term not then past; and if the Count be made of a Demise then in being, it is all the Amendment we desire. But, My Lord, here it may be objected, When must that Demise bear Date and commence? Must the Court set a Date and Commencement to Plaintiff's Demise?

To which I answer, That the Commencement is certain by the Declaration, *vide licet*, from the 25th of March last, and that must be the 25th Day of March last before the Term the Issue is entred on, which is from 96. and then the Date of the Demise must be betwixt Trinity Term, 96. and the 25th of March before, which points directly at the Mistake which is in *Michaelmas*. If the 10th of April 1697, instead of 1696, and where the Court can by the Record take Notice what was intended; it is the same Thing as if it had been once rightly named before, and is within the Meaning of that Statute, which after the naming of many Mistakes, hath these general Words, and all other Mistakes of the like Nature, which, My Lord, must be of no Signification, if this be not the Meaning of this Statute.

• And, My Lord, as to this being the Fault of the Clerk, I need no Argument to prove it, for the Matter shews it self; and the Declaration against the casual Ejector being right, proves this the Fault of the Clerk in

tran-



transcribing this Wrong, though the Declaration may properly be said to be the Act of the Client, yet that shall be intended the Declaration against the casual Ejector, that being the First Declaration, and all that is necessary for the Client to instruct his Attorney in, the rest only depending on the Forms and Practice of the Court, wherein the Attorney needs no further Instructions from his Client.

Now, My Lord, I do admit that the general Words in this Statute are restrained; that is to say, All other Matters of the like Nature, not being against the Right of the Matter of Suit, nor whereby the Issue or Trial are altered. But, My Lord, this Restriction hath no Relation to the particular Defects that were mentioned before, whereof ours is one, but to the general Words only; and, My Lord, we are within the Intent of these general Words also.

For this Amendment is not against the Right of the Matter of Suit; for that was whether the Plaintiff's Lessor had a Title, and that hath been tried and found for the Plaintiff; nor is the Issue or Trial altered, for had this been amended before Trial, the Defendants must have pleaded the same Plea, and the Trial would still have been the same. The Danger only was at the Trial on the Plaintiff's Side, whether this was not Cause of a Nonsuit, and therefore it was his Business to have it amended before Trial, for fear of being nonsuited at Trial; but having tried his Cause, and the Right found with him, he is much more entitled to the Benefit of

this Amendment, because it is to support a Verdict; Nay, My Lord, a Verdict that was found according to the Right and Merits of the Cause, which all Courts have always been very tender of.

Lastly, My Lord, I shall offer this to your Lordship, That the Matter we pray to amend, is not Matter of Substance, yet ought to be amended to avoid Absurdity.

I must confess, That if this had been a Demise to commence *in Futuro*, it would have admitted of a greater Argument; but, My Lord, this is a Demise in being at the Time of the Declaration, and not yet expired, and so much appears by the Record.

My Lord, the Record is an Issue of *Trinity Term*, 1696. and the Demise is laid the 10th of *April*, 1697. *Habend* from the 25th of *March* then last past, and the Words in the Declaration are *Demiser'* in the Writ, and *Demissent* in the Count; and that the Plaintiff entered by Virtue thereof, and was possessed, and the Defendant ejected him, his Term being not ended, &c. all which the Defendant confesses.

This Demise must be before *Trinity Term* 96. or else the Words *Demiser'*, *Demissent*, are to no purpose; and it is impossible that before *Trinity Term* 1696, the Plaintiff's Lessors should have demised the 10th of *April* 1697, for that Time was not come. But it is possible that the 10th of *April*, 1696. the Plaintiff's Lessors might make a Lease dated the 10th of *April*, 1697. before the Time of the Date.

And

And if that be the Construction of it, then this is a Deed from the Time of the Execution, and the Term commences from the 25th Day of *March* before.

Or else this being an impossible Date, must be altogether rejected, and then *Trinity Term* and the 25th Day of *March* being all the Times that are certain in the Declaration, the Confession is, that betwixt the 25th Day of *March*, 1696. and *Trinity Term* following, the Plaintiff's Lessors demised, the Date being no essential Part, and then this is a good Demise for Five Years from the 25th of *March*, 1696.

Greater Mistakes than these have been amended after Verdict.

*Lees* and Sir *Nathaniel Curson*, Bart. in Mich. last. Ejectment, wherein the Plaintiff's Lessor being an Infant, the Declaration was, That the Infant demised by his Guardian, which was no Demise, and the Cause being tried at Staff. last Summer Assises, the Defendant's Council insisted on the Mistake, and relied thereon, and it being referred by Consent to the Judge, and a Verdict given for Security, the Judge referred the Matter to the Court of Common-Pleas, who amended it, though never right in any of the Proceedings.

The Bishop of Worcester's Case in this Court, where there were Five Defendants and but Three of them pleaded, and after Verdict amended, and the Verdict was recorded against Two, That no Issue was joined against in the Record of *Nisi prius*.

*15 Car. 1.  
Hastfoot and  
Cade, after  
Verdict the  
Day in Re-  
cord is alter-  
ed after Ver-  
dict.*

## The Law of Ejectments.

*Camberlain* against the Hundred of Tun-dring upon the Statute of *Hue and Cry*, where it was ordered, That the Record both of the Declaration and Issue should be amended by the Attorneys, and this was before Trial.

Ours is a far stronger Case; for this Amending, if it had been before Trial, would not have altered the Issue, or any-wise influenced the Merits of the Cause.

Now, My Lord, we are intitled to the Favour of the Court, in respect we moved this Matter before Trial, and were bid by the Court to move it astwards; and if this had been a fatal Matter, the Plaintiff ought to have been nonsuited, which was then insisted on by the Defendants, and denied; and so the Plaintiff exposes his Title, paid the Charges of the Jury and other Things, which cost him above 100*l.* and if he had been nonsuited, was by Rule but to pay Country Costs, and the Plaintiff's Lessors are Purchasers for a valuable Consideration under a Title of above Sixty Years Possession. And having now upon a fair Trial and a full Evidence obtained a Verdict, we hope your Lordship will put them in a Capacity of Reaping the Fruit of it.

The Judgment in Ejectment is double, one as to his Damages, upon which the Costs are attendant, and the other as to the Term whereupon his Possession depends; and the Plaintiff may take out Two Executions, one for his Costs, and the other for his Possession. Now if there be Cause to stay the Possession, there is more Cause to stay Judgment as to Damages

Damages and Costs, because the Issue hath been fairly tried, and the Defendants have confessed that the Plaintiff was in Possession, and that the Defendants did eject him; now if his Term was not commenced, but his Possession tortious, yet he is not to be turned out by a Stranger that hath no Title, as the Defendants were, the Jury having found against them, and the Damages are for the Entering upon our Possession and ejecting us.

But the Court said it could not be amended, and Mr. Levett brought a new Trial and recovered.

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#### *Declarations, when amendable or not.*

**I**N Ejectment where the Title is material, Declaration amended after Plea, without paying Costs.  
the Plaintiff amended his Declaration after Plea (but while all was in Paper) in the Date of his Action, without Costs paying. *I Keb. 14.*

After Verdict and Judgment the Declaration cannot be amended, for that might attaint the Jury: As in Ejectment of the Rectory of H. and other Tenants, *virtute cuius intravit in Tenementa prædicta.* Verdict and Judgment de Rectoria & Tenementis prædicti, it cannot be amended; but on such Omission in Judgment or Acts of the Court it were amendable, but not of the Declaration. But in this Case the Court conceived it well enough, and that the Word *Tenements* in-

*Aliter in Judgment and Acts of the Court.*

[*Tenements*] include a Rectory.

## The Law of Ejectments.

includes a Rectory, whether there be Glebe or not, but not so of a Manor, *Hill.* 25 & 26 *Car.* 2. *Bale's Case.*

**Declaration  
of an House  
lying in Two  
Parishes, and  
the House lies  
in one, it's  
good.**

**It must be al-  
leged in  
what Vill the  
Tenements  
are.**

**Where the  
Pernomen is  
not good.**

If the Plaintiff in Ejectment declare of an House lying in Two Parishes, if the House do lie in either of the Parishes, and do not lie in both of them, yet the Declaration is good; for there is Certainty enough in it. *Pract. Reg.* 110.

It must be alledged in what Vill the Tenements are; the Plaintiff declares, that P. C. by Indenture *apud F.* let unto him one House and Twenty Acres of Land, by the Name of all her Tenements in S. *Per Cur'*, the Declaration is not good, because it is not alledged in what Vill the Tenements are; for the naming of the Vill in the *Pernomen* was not material, and so *Cro. El.* 822. *Gray and Chapman.*

The Plaintiff declares of a Lease of one Messuage, Ten Acres of Land, Twenty Acres of Meadow, Twenty of Pasture, by the Name of one Messuage, Ten Acres *Prat.* be it more or less; after Verdict a *Nil cap. per Billam* was entred: For upon the Matter by the Plaintiff disclosed in his own Declaration, he cannot have Execution of the Quantity found by the Jury: For in the Lease there is not but Ten Acres demised, and these Words in Judgment of Law cannot be extended to Thirty or Forty Acres, and the rather because the Land demanded by the Declaration is of another Nature than that mentioned in the *Pernomen*; for this goes only to the Meadow, and the Declaration is to the Arable and Pasture. *Telv. p. 166.*

In

In this Action it was moved in Arrest of Judgment, That the Plaintiff had declared of Two Demises, (*viz.*) that *J. S.* demised Ten Acres of Land to him, and that *J. N.* had demised Ten other Acres of Land to him, *Habend* for the Term of Five Years, &c. and that he entred into the Premisses demised to him by *J. S.* and *J. N.* *in forma prædicta*. After Verdict, upon Not guilty for the Plaintiff, it was objected, That in one of the Demises there is no certain Term or Estate; for the *Habend* can only be referred to the Demise of *J. S.* for that begins a new Sentence; but *per Cur'*, the *Habend* shall be a good Limitation of both Demises for Five Years, and when it is shewed that the Plaintiff entred into the Premisses demised to him *in forma prædicta*, That is an Averment that all was demised to him, for that it is *forma prædicta*. *Forma prædicta*  
how con-  
strued.  
*2 Ventr. 2 W. & M.*

In *Ejectment* the Plaintiff need not count of the Demise of more Acres than the Acres out of which he was ejected; and a Demise may be pleaded of any Parcel without mentioning the Entire; as if one demise to me Two Acres for Term of Years, and I am ejected out of one Acre by a Stranger: Now I shall have *Ejection Firme*, and count that one Acre was demised to me, **without** any Mention of the other Acre. *I Saunders p. 208.*

Where one declares on a fictitious Lease to *A.* for Three Years, and within the same Term declares of another fictitious Lease to *B.* of the same Lands, the last is not good; for Trespass for the mean Profits must be *last is not brought good.*

brought in the First Lessee's Name, *ut dicitur.*

As to the Form:

**Declaration** *Ejectment was against Two, and the Declaration against Two, ration was intravit & expulit;* and it was *expulit.* amended *Yelv. 223.*

**The Omission of *Vi & Armis* in the Declaration.** *Vi & Armis* are left out in the Declaration. *Cro El. 340.* *Griffith and Williams's Case,* saith it is but Matter of Form, and it is helped after a Verdict; but in *Cro. Jac. 36.* and *Yelv. 223.* in *Odington and Darby's Case,* where *Vi & Armis* was left out, and Error was brought in the *Exchequer-Chamber,* it was not suffered to be amended, but Judgment was reversed. So *Godb. 286.* and so in *Sykes and Coke's Case,* the Want of *Vi & Armis* is not helped by a Verdict; but in Error in *B. R.* if upon Diminution it be well certified, the Court will amend it. *Godb. 286.* *2 Bulstr. 35.* *Cro. Jac. 306.* *Yelv. 223.* *Odington and Darby. 1 Keb. 164.*

In *B. R.* the Transcript of Trespass and *Ejectment was De Placito Transgressionis & Ejectionis,* omitting *Firme,* it was amended. And in *B. R.* it would be amended in the Record it self before Removal. *1 Keb. 106.*

**The Omission of *Extratenet* in the Declaration.** Exception was taken in *Godb. 60, 71.* because the Plaintiff did not say in his Declaration *Extratenet;* but *per tot' Cur'*, those Words were not material; for if the Defendant do put out the Plaintiff, it is sufficient to maintain the Action. So if it be *à possessione sua ejecit,* instead of *à firma sua ejecit,* it's good; for *ejecit à possessione inde,* inde hath relation to the Farm. *Godb. 60, 71.*

In *Ejectione Firme*, the Writ and Declaration were of Two Parts of certain Lands in H. and saith not, in Two Parts in Three Parts to be divided, and yet it was good as well in the Declaration as the Writ; and this Difference was taken *per Cur'* by Intendment and Construction of Law, when any Parts are demanded without shewing in how many Parts the Whole is divided, that there remains but one Part not divided; as if Two Parts are demanded, there remains a Third Part; and when Three Parts are divided, there remains a Fourth Part: But if any Demand be of other Parts in other Form, there he ought to shew the same specially, as if one demands Three Parts of Five Parts, or Four Parts of Six, &c. 13 Rep. 58.

Declaration in Ejectment is, *Quod cum* such an one *Dimisit*, it's good here, because he cannot have the Action without a Lease; but Trespass, as Assault and Battery, &c. it is not so. And *Doddridge* took this Difference, Where the Thing on which the Action is brought, hath Continuance, and where the Action is brought for a Thing done and past. In *Ejectione Firme* there the Lease hath still Continuance, and there such a Declaration with a *Quod cum*, is good, because it is in the Affirmative; but where the Thing is past, as Battery, it ought not to be with a *Quod cum*, 2 Bulstr. 214. *Sherland's Case*.

As for the Manner of Declaring in respect of the Thing demised, *vid. supra, tit. Of what Things an Ejectment lies*: To which I shall add one Case in the Exchequer. *Ejectment*

Demand of a Part, without shewing into how many Parts divided,

Declaration in Ejectment with *Quod cum* is good, not so in Trespass.

*De Herbagio.*

**Herbage does not include all the Profits of the Soil.**

ment for so many Acres of Meadow, and so many Acres of Pasture, on *Non culp'* the Jury find a Demise de *Herbagio & Pannagio* of so many Acres. *Per Cur'*, by the same Reason that an Ejectment lies of a Lease of Herbage, by the same Reason the Plaintiff ought to declare accordingly; and Herbage does not include all the Profits of the Soil, but only Part of it. *Hardr. 330. Wheeler's Case in Scaccario.*

The Form of a Declaration from a Parson, of Rectory and Tenements in *B. R.* with an Averment of the Parson's Life. *1 Rep. 149. Chedington's Case.*

The Form of a Declaration in Ejectment in the *Common-Pleas. Mich. 16 Car. 2.*

## Tempest.

*Midds ff. V. nuper de Londoni Gen-*  
*A. attachias fuit ad respon-*  
*dend W. J. de plito quare Vi & Ar-*  
*mis unum Hessuagium u. um Gardi-*  
*nun decem aeras terre tres aeras pra-*  
*ti & quatuor aeras pasture cum perti-*  
*nentiis in h. que S. W. vid eidem W.*  
*dimisit ad terminum qui nondum pre-*  
*teriit intravit & ipsum a firma sua pre-*  
*dicit ejecit & alia enormia ei intulit ad*  
*grave damnum ipsius W. & contra pa-*  
*tem Dom Regis nunc, Ec. Et unde*  
*idem*

idem W. p. I. S. Attornat suum queritur quod cum predict S. primo die Octobris Anno Regni Dom Regis nunc quinto decimo apud H. predict dimisit prefat W. Tenementa predicta cum pertin habend eis W. & assignat suis a Festa Sancti Michaelis Archangeli tunc ultimo preterito usq finem & terminum quinq annoz extunc prime sequen & plenarie complend & anien virtute ejus dmissionis idem W. in Tenementa predicta intravit & fuit inde possessionat. Et sic inde possessionat existent predict W. postea sci licet eod primo die Octobris Anno Regni dict Dom Regis quinto decimo supradicto Vi & Armis, &c. in Tene menta pdica cum pertin que pdic S. prefat W. in forma pdica dimisi ad terminum pdic qui nondum preteriit intravit & ipsum a firma sua pdica ejecit ac alia enormia, &c. ad grave damnum, &c. & contra pacem, &c. Unde dicit quod deteriorat est & damnum het ad valentiam decem Librarum & inde pdue Sectam.

Et pdic A. p G. L. Attornat suum ven & defend vim & injuriam quando, &c. L. lo. usq Octab Hillarij.

In the King's-Bench.

Ware s. T. H. queritur de Jacobo  
 reſe Dom Regis eozam ipso Rege exi-  
 ſten p eo videt quod cum H. M. Gen  
 ultimo die Januarij Anno Regni  
 Dom nostri Caroli secundi nunc Regis  
 Anglie, Ec. vicesimo, apud B. in Com  
 predice dimiſiſſet concesſiſſet & ad fir  
 mām tradiſiſſet pſato T. unum Aſſua  
 gium & duas Aeras Paſture cum per  
 tīn ſituat jaceat & exiſtēt in B. pre  
 dictē habend & tenend tenementa p̄dicta  
 cum pertīn prefato T. & assignat ſuis  
 a vicesimo quinto die Decembris tunc  
 uſc pterit uſq plenum finem & termi  
 num quinqꝫ annoꝫ extunc prime ſe  
 quen & plena & finien complend vir  
 tute cuius quidem diuſionis idem T.  
 in tenementa p̄dicta cum ptin intravit  
 & fuit inde poffeſſional quousq; p̄dict  
 Jacobus poſtea ſciit eodem ultimo die  
 Januarij Anno Regni dicit Dom Regis  
 nunc vicesimo ſupradic Vi & Ar  
 mis, Ec. in tenementa p̄dicta cum per  
 tīn in & ſuper poffeſſionem ipſius T.  
 inde intravit & iſpum T. a poffeſſione  
 ſua p̄dict termino ſuo p̄dict inde non  
 dum finit ejecit expulit & amovit ip  
 ſumq; T. a poffeſſione ſua p̄dict extra  
 tenuit & adhuc extratenet & alia euoz  
 mia ei intulit contra pacem dicit Dom  
 Regis nunc ad dānum ipſius T. 20 l.  
 Et inde p̄due ſectam, Ec.

# The Law of Ejectments.

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In the Office of Pleas in the Exchequer.

Debet s. A. B. debitor Dom Regis  
nunc venit coram Baro-  
nibus hujus Scaccarij duodecimo die  
februario hoc Termino p C. D. At-  
torum suum & queritur p Willam versus  
E. F. scene hic in Curia eodem die de-  
plito Transgressionis & Ejectionis fir-  
me pro eo videlicet qd cum quidam J. B.  
secundo die Feb Anno Regni dict  
Domini Regis nunc vicesimo primo apud,  
Ec. (put supra in B. s.) ad dam-  
num ipsius A. decem Librarum Quo-  
minus; Ec; Et inde producit Sciam,  
Ec.

*A Copy of the Declaration you must leave with  
the Occupier of the House and Land, with this  
or the like Indorsement :*

James B. you may perceive that I am sued  
for the Messuage and Lands within men-  
tioned, being in your Possession: These are  
therefore to desire you to defend your Title,  
or else I shall suffer Judgment to be entred  
by Default.

*Or thus:*

Unless the Tenant in Possession, or they  
under whom he claims, do next Tri-  
nity Term appear to this Declaration, and  
make him of themselves Defendants there-  
unto, and by Rule of Court confess the Lease,

K

Entry

Entry and Ejection, and insist only upon the Title at the Trial, the Defendant in this Declaration will confess Judgment, and Possession will be delivered accordingly to the Plaintiff, and you turned out of Possession.

Your Friend J. D.

*To A. B. Tenant in Possession  
of the Premises within  
mentioned.*

To this the Tenant may appear by his Attorney, and consent to a Rule with the Plaintiff's Attorney, to make himself Defendant in the Room of the casual Ejector, and to confess Lease, Entry and Ouster, and at the Trial to stand upon the Title only; or in Default thereof, Judgment will be entred against the casual Ejector.

If the Tenant in Possession do not appear in due Time, and enter into a Rule, as is aforesaid, then upon *Affidavit* made of the Service thereof, and Notice given him to appear, the Court upon Motion will order Judgment to be entred against the casual Ejector; for if the Defendant plead nothing to this Action, but let it pass by *Nihil dicit*, the Judgment cannot be had upon a common Rule, as in Actions of Debt, and such like, but by Motion of the Court, because it is to alter Possession.

No Judgment  
against the ca-  
sual Ejector  
but by Mo-  
tion of the  
Court.

What is to be  
done after the  
Declaration  
delivered.

After the Declaration delivered, the Person whose Interest is concerned, ought to retain an Attorney, who is to give his Client's Name

Name to the Plaintiff's Attorney, that so he may be made Defendant instead of the casual Ejector; and then a Rule is to be entred by Consent, as follows:

*Robinson. Pas. 15 Car. 2. Regis.*

*D. versus M. in Ejectione Firme de Terris & Tenementis in H. in Com' M. ex dimissione E. P.*

**O**ffidinat est p Curiam ex assensu I. H. Accordanat querit & I. H. Accordanat p T. W. de W. in Com' E. pdicte Reom quod idem T. admittatur defensus qui indilat comparebit p Accordanum suum pdicte & recipiet narrationem & plitabit adinde generalem exitum hoc termino & ad Triationem superinde habend idem T. comparebit in propria persona sua aut p ejus Concilium vel Accordanam. Et cognoscat dimissionem intimationem & actualem expulsionem vel quod in defectu inde intretur judicium versus Def. G. M. casualem Ejatozem sed parcatur ulterior prosecutio versus cum quousq; pdicte T. in aliquo pmissorum defalc secerit. Et ex consimili assensu ulterius ordinat est per Cur quod pdicte T. nullum capiet advantagium versus querent p ejus non psecutio super Triatione occasionat p hujusmodi defaltam sed quod pdicte T. solvet querenti custagia Prothonotari pinde taxand. Et ulterius ordinat est quod pmissor

missor querentis sit onerabilis cum solutione custagiorum defendant per Cur aliquo modo taxando vel adjudicand.

The like in B. R.

Die Lune prox' post Craft' Ascensionis Domini, 23 Car. 2. Regis.

**O**rdinatum est ex assensu ambarum partium & eorum Attornat qd W. H. qui clamat titulum Messuagio in questione fiat Def. & competit indilat ad Sect' que & imponit commune Vallium & recipiet narrationem in plito Transgressionis & Ejectionis Firme & plitabit adinde non culp & super triatione exitus cognit dimission intration & actuali ejctionem & stabit super titulum tantum alie judicium intretur per defalse versus modo querent. Et si pdict W. H. super triatione exitus illius non cognoscit dimission intracion & actual eject p qd quer psequi ulterius non potest quod tunc nul misse sive custaz super tali non pro adjudicentur. Et ulterius ordinat est qd si veredict redditum fuerit p pdict W. H. vel predict quer non pro foret ppter aliquam aliam causam p qm non cognoscit dimission intracion & actuali ejctionem pdict quod tunc le Lessor quer solveret talia custaz W. H. Def' qualia p Cus adjudicata fuerint p Cur.

An Affidavit in Ejectment to move for Judgment against the casual Ejector.

Inter { A. S. Quer' } de Terris & Tenementis in  
& { R. in Com' H. ex dimis-  
B. C. Def' } sive J. H.

T. S. maketh Oath, That he this Depo-  
tent on Thursday the —— Day of  
— last past, did deliver unto J. D. Te-  
nant in Possession of the Premisses in Que-  
stion, a true Copy of the annexed Declara-  
tion, with an Indorsement or Superscription  
thereupon, to this Effect, viz. J. D. You may  
perceive by this Declaration, that I am sued as  
Casual Ejector for the Land and Tenements, with-  
in specified, in your Possession (whereunto I claim  
no Title): I do therefore hereby give you timely  
Notice, that unless you appear and defend your  
Title this next —— Term, I shall suffer Judg-  
ment to pass against me by Default, whereby you  
will be turned out of Possession. Your Loving  
Friend, C. R. Dec. 12. 1679. Which said In-  
dorsement or Superscription this Deponent did  
then read to the said T. D. and acquainted  
him with the Contents thereof.

Note, It is good Service to deliver the Co-  
py to the Wife, or to the menial Servant of  
the Tenant in Possession. If to the Wife,  
thus, (viz.) I did deliver to Anne the Wife; or,  
if to the Servant, to R. W. the hired Servant  
of J. D. and desired her to acquaint her Husband  
therewith; or him, his Master, therewith.

## The Law of Ejectments.

If there be Two Tenants, then say, I did deliver one Copy of the annexed Declaration to A. R. Tenant in Possession of Parcel of the Premises in Question; and another Copy thereof to C. D. Tenant in Possession of the Residue of the Premises in Question; upon which said several Copies was subscribed or indorsed to this Effect, &c. Which said several Indorsements, he the said Deponent did read to the said several Tenants, &c.

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C H A P.

## CHAP. VIII.

Of Pleadings in Ejectment. What shall be a good Plea in Abatement in this Action. Entry of the Plaintiff hanging the Writ. Entry after Verdict, and before the Day in Bank. After Impariment no Pleading in Abatement, and why. Death of the Lessor hanging the Writ. Death of the Lessee before Judgment. Abate, because he shews not in which of the Vills the Land lies. Ejectment against Baron and Feme; Baron dies since the Nisi-prius, and before the Day in Bank. Of Pleading to the Jurisdiction. Conisance not allowable on Suggestion, but it must be averred or pleaded. How Prescription to the Five Ports to be made. Ancient Demesne, a good Plea in Ejectment, and why. Of Plea of Ancient Demesne allowed the same Term, and how. Of Pleas Puis darrein Continuance. Entry Puis darrein Continuance pleaded at the Assizes is reasonable; the Consequence of a Demurrer to this Plea. Release from one of the Plaintiffs in Writ of Error, whom it shall bar. Accord with Satisfaction pleaded in Ejectment. Aid Prier, and why the Defendant shall not have Aid of the King; aliter of a common Person: But a Writ not to proceed Rege inconsulto allowed. Recovery and Execution in a former Action pleaded in Bar. Bar in one Ejctione Firme, how a Bar in another.

THE General Issue in Ejctione Firme, is now settled by Rule of Court to be,

Not guilty, tho' formerly the Defendant might have pleaded *Non ejicit*, or any other Title; and therefore tho' this *Chap. 2.* may seem needless, because by the new Practice, upon Not guilty pleaded, the Title is only to be insisted on at the Trial, yet in some Cases special Pleas may and ought to be pleaded in *Ejectione Firme*, especially in inferior Courts, which I shall first treat of, and then give a little Touch as to the special Pleading formerly in Use in this Action, that so the Reader may not be totally ignorant thereof. But first,

*What shall be a good Plea in Abatement.*

That the Plaintiff had another Ejectment depending.

Action commenced, and the Term expires pendent the Suit.

Entry of the Plaintiff hanging the Writ.

*Per Cur'*, It is a good Plea in Abatement of *Ejectione Firme* in *B. R.* That the Plaintiff had another Ejectment for the same, depending in the Common Bench. *Moor p. 539. Digby and Vernon.*

In *Ejectione Firme*, if the Term be expired before the Action brought, the Writ shall abate, because he ought to recover the Term and Damages; but if he commence the Action before the Term expire, and it expires pendent the Writ, there it shall not abate, but he shall recover Damages. *Dyer 226.*

Entry of the Plaintiff hanging the Writ, shall abate the Writ.

Death of the Lessor hanging the Writ, doth not abate the Writ: Agreed by *G. Crook in Banister and Eyre's Case, Mic. 18 Jac. B. R.*

But the Death of the Lessee before Judgment abates the Writ.

In *Williams* and *Asher's* Case, the Defendant would have pleaded Entry after the Verdict in Abatement of the Writ, but it was held clearly he had not Day to plead it, but it is put to his *Audita Querela*. But in *Parkes* and *Johnson's* Case, in *Ejectione Firme* the Error assigned was, That the Plaintiff after Verdict, and between the Day of *Nisi prius* and the Day in *Banco*, had entred, whereby his Bill was abated, and demurred thereupon: *Per Cur'*, this cannot be assigned for Error, for it proves the Bill is abateable, but is not abated *in fait*; neither is it material to assign it for Error, for upon such *Suimile* which goes only in Abatement, the Judgment shall be examined. *Cro. El. 181. Asher's Case, Cro. El. 767. Parks and Johnson.*

Entry after  
the Verdict,  
and before the  
Day in Bank,  
is not Error.

The Plaintiff declares of one Messuage and Forty Acres of Land in *Stone*. The Defendant imparls till another Term, and then pleads, That within the Parish of *Stone* are Three Vills, *A. B. and C.* and because the Plaintiff does not shew in which of the Vills the Lands lie, he demands Judgment of the Bill, & *quod ob causam praedicta Billa praedicta cassetur*. The Plaintiff demurs, and adjudged for him. For, 1. After Imparlace the Defendant may not plead in Abatement of the Bill, for he had accepted it to be good by his Entry into Defence, and by his Imparlace. 2. The Matter of the Plea is not good, because the Defendant does not shew in which of the Vills the Messuage and Forty Acres lie. And where a Man pleads in Abatement, he ought to give the Plaintiff a better Writ, and upon Demurrer there shall be a *Respondeas Ouster*. *Yelv. 112. Tomson and Collier.*

After Impar-  
lance no  
Pleading in  
Abatement,  
and why.

*Reg.*  
Where a Man  
pleads in A-  
batement, he  
ought to give  
to the Plain-  
tiff a better  
Writ.

After

Ejectment  
against Baron  
and Feme ;  
Baron died  
since the *Nisi prius*, and be-  
fore the Day  
in Bank, the  
Action contin-  
ued against  
the Wife.

Where the  
Plaintiff by  
his Demand  
confesseth the  
Writ abate-  
able.

After Verdict for the Plaintiff (the Question being brought against Baron and Feme) that the Husband was dead since the *Nisi prius*, and before the Day in Bank ; and whether the Bill should abate in all, or should stand against the Feme, was the Question ; and because it is in Nature of an Action of Trespass, and the Feme is charged for her own Fact, it was adjudged, that the Action continued against the Feme, and that Judgment should be entred against her sole, because the Baron was dead. *Cro. Jac. 356. Rigley and Lee.*

*Ejectione Firme* by J. S. against N. and O. N. appears and pleads the General Issue, and Process continues against the other until he appears, and then he appears and pleads an Entry into the Land *puis darrein Continuance. Judgment de Brev'*. The Plaintiff upon this Plea demurs in Law, *Curia advisare* ; and in the Interim the First Issue was found *pro Quer' versus N.* and the Plaintiff prays his Judgment. He shall not have it, because the Plaintiff by Demurrer in Law had confessed the Writ abatable ; and the Writ by the Entry of the Plaintiff was abated, in as much as the Term is to be recovered. *Dyer 226. Nevill's Case.*

To the same Purpose is the late Case of *Boys* and *Norcliff*.

In *Ejectione Firme* the Question was, If the Entry into the Land after the Day of *Nisi prius*, and before the Day in Bank, may be pleaded in Abatement ; and if such Entry, *puis darrein Continuance*, be a Plea in Abatement ? Note, this was in Error out of the Common-Bench, and held by the Court of the King's-Bench that it is not Error, yet Entry will not revive the

the Term, because it's only in Abatement, and there is a Diversity between this and Death. *1 Bulstr. 5.* And it's usual if the Entry be before the *Nisi prius*, to plead such a Plea at the Assizes, and if it be omitted, the Advantage is lost; but not so in case of Death: By Death the Writ is actually abated, there being no Time to plead it in Court, but Entry must be pleaded *puis darrein Continuance in Abatement only.* *Sid. p. 238. Boys and Norcliff.*  
*1 Keb. 841, 850. mesme Case.*

Entry before  
the *Nisi prius*,  
to be pleaded  
at the Assizes.

Difference  
between En-  
try after Ver-  
dict, and  
Death.

'Shall not abate by the Death of the Lessee.  
*Vid. 3 Keb. 772.*

Not abate by  
the Death of  
the Lessee.

## Of Pleading to the Jurisdiction: Conscience of Plea, how to be demanded and allowed, and how pleaded.

This Plea was formerly allowed of, and so is still in some Cases.

Now every Plea which goes to the Jurisdiction of the Court, ought to be taken most strong against him that pleads it; and to this Purpose there is a pretty Case.

In Ejectment the Plaintiff declares of a Lease made at *Haylsham*; the Defendant pleads, That *Haylsham prædict. ubi tenementa jacent*, is within the Cinque-Ports where the King's Writ runs *apud Jurisdictionem*. *Cinque-Ports.* not; and so he pleaded to the Jurisdiction of the Court. The Plaintiff reply'd, That the Town of *Haylsham* was within the County of *Sussex*, *absque hoc*, That it was within the Cinque-Ports. The Defendant demurs, because he ought to have traversed *absque hoc* *Traverse.* *quod Villa de Haylsham ubi tenementa jacent*, is within the Cinque-Port; for the Truth was, it was Part in the Cinque-Ports, and Part in the

the County of *Sussex*, and the Land lies in the Part which is in the Cinque-Ports; but *per Cur'*, the Traverse is good, and the Bar is naught. The Defendant in his Bar ought to have made his Distinction, and every Plea which goes to the Jurisdiction of the Court, ought to be taken most strong against him that pleads it, and the Traverse here ought to be to the Town, and not to the *Ubi*, which was idle; for the Law said as much, and we do not imagine any Fractions of Towns, *Winch. p. 113. Austin and Beadle. Cro. Jac. 692. mesme Case. Hutton p. 74. mesme Case.*

*Note.* He who would demand Conisance of this Plea, ought to shew his Warrant of Attorney in *Latin. Sid. 103.* in the Bishop of *Ely's Case.*

The Attorney General in *Hales and Full's Case* prayed Allowance of the Plea, That the Lands in the Ejectment were within the Cinque-Ports. Cinque-Ports, which the Court granted, there being no Impariment General or Special, both which affirm the Jurisdiction of the Court; and at the *Venire fac'* the Plaintiff may suggest the Lands to be within the Cinque Ports, and have it of Places adjacent within the County. *I Keb. 65.*

*Ely.*  
Conisance not allowable on Suggestion, but it must be averred on Record.

It must be averred or pleaded, and may be after Impariment in Ejectment.

Sir Edward Turner in Ejectment, *ore tenus*, shewing his Warrant of Attorney, demanded Conisance for the Bishop of *Ely*; *per Cur'*, it's not allowable on Suggestion, which is Cinque-Ports, Ancient Demesne, &c. It must be averred on Record; for tho' the Court takes Notice that *Ely* is a Royal Franchise, yet this must be so averred or pleaded, and may be after Impariment, when any Third Person is concerned since the new Way of Ejectment used in

*Green*

# The Law of Ejectments.

141

Green and Simpson's Case; but Siderfin is *contra*,  
That it cannot be pleaded after Imparlace,  
1 Keb. 946, 948. *Sid.* 103.

The Defendant prayed to be admitted to plead in Abatement, That the Lands in the Ejectment are within the Cinque-Ports, and the rather, for that he was made Defendant by the Rule of Court, with a special Imparlace; (with a *salvis omnibus, &c.*) *Per Cur'*, let him plead in Chief, unless in Ancient Demesne no special Plea has been allowed, because the Lord would be prejudiced in a Trial at Common Law. 1 Keb. 725. *Hale and Uppington.*

Where Coni-  
fance of Plea  
not allowed  
of in Eject-  
ment.

In Hall and Hugb's Case in Ejectment of Lands, part within and part without the Five Ports, the Defendant, after Imparlace, pleads in Abatement, That part of the Lands are in the Five Ports, and so prays Judgment, *si Cu-  
ria cognoscere velit, &c.* The Plaintiff demurs, because it does not appear but that the Demise was out, and it's transitory, and may be laid any where, tho' the Lease was actually sealed in another Place or County; and the Defendant may plead *Non dimisit*, as well as Not guilty. The Demise in this Case was laid at Maidstone; *per Twisden*, this being an inferior Court, they cannot try the Demise, which is issuable, and the great Mischief that came in Want of Proof of the Demise, was the Cause of introducing the new Rule. In this Plea it was said, That the Lands were in F. Parcel of the Cinque-Ports, where Time out of Mind the Writ of our Lord the King runs not, and that they of F. have always tried, &c. This is ill, for the Prescription should have been annexed

Part within  
and part  
without the  
Cinque-Ports,  
and demur.

Where Non  
dimisit plead-  
ed in Eject-  
ment.

Why the new  
Rule of con-  
fessing Lease  
was introdu-  
ced.

Prescription  
must be to  
the Five  
Ports, and not  
to F. only.

nected to the Five Ports generally, and not to F. only; and the Court ordered him to plead in Chief, and to confess Lease, Entry and ouster, or else that the Plaintiff take Judgment against his own Ejector. 2 Keb. 69, 79.

1. Whether Ancient Demesne pleaded, be a good Plea?
2. Whether it may be pleaded after Imparlane?

Formerly an-  
cient De-  
mesne a good  
Plea in Eject-  
ment, and  
why.

In Cro. Car. 9. it was a Question, Whether Ancient Demesne may be pleaded after Imparlane? It's resolved, That *Ancient Demesne* is a good Plea in *Ejectione Firme*, and in Replevin; tho' it was doubted in our Books formerly, but that is fully settled in several Reports. In Alden's Case, 5 Rep. the Defendant pleads, That the Tenements in which, &c. were parcel of the Manor of O. in Com. S. *Quod quidem Manerium est de antiquo Dominico*, &c. and demands Judgment, *si Curia hic vult cognoscere*, &c. The Plaintiff demurs, and per Cur' it is a good Plea: 1. Because it's the common Intendment that the Right and Title of the Land will come in Debate in this Action. 2. In this Action the Plaintiff shall recover the Possession of the Land, and have Execution by *habere fac' Possessionem*, and this Action favours of the Realty. So in Pymmock and Feilders Case, where the Pleading was nice; the Defendant pleads that the Lands were Ancient Demesne, and pleadable by a Writ of Right, Close, &c. The Plaintiff shews that they were Copyhold Lands, Parcel of the Manor, and entitles himself by Lease under the Copyholder, and traverseth, That they were im-

impleadable by a Writ of Right, Close; and it was thereupon demurred. 1. Because Copy-hold Land, Parcel of a Manor of Ancient Demesne, should be pleadable there, and not at Common Law. 2. Because this Traverse, that they were impleadable, is but the Consequence of Ancient Demesne. *Per Cur'*, the Copy-hold Lands are as the Demesnes of the Manor, and are the Lord's Freehold, and therefore not impleadable but in the Lord's Court, and the Traverse is well enough taken. 1 *Bulstr.* 108. *Cr. El.* 826. 5 *Rep.* 105. *Alden's Case.* *Stiles* 90. *Cro. Jac.* 559. *Pymmock and Feilder.*

Now a Lease for Years is intended to be taken real in a Recovery, and because a Lease for Years intended to be recovered in *Ejectione Firme*, it is a good Plea to say it is Ancient Demesne, yet a Lease for Years is but personal in Quality. 2 *Rolls Rep.* 181. *Banister and Eyres.*

The Defendant imparles in *Ejectione Firme*, and after pleads that the Land is Ancient Demesne, &c. & *unde intendit quod Curia non vult cognoscere*, &c. The Plaintiff demurs: *Per Cur'*, this Plea is pleadable after Imparlane, because if Judgment be given here, the Lord will reverse it by *Disceit*, and the Judgment will be avoidable, and the Diversity is true, *A Man may plead that which is in Bar after an Imparlane, but not that which goes to the Writ*; and this holds in all Cases but Ancient Demesne. 2. The last Conclusion is Surplusage; but if he had begun his Plea *Action non*, it had been ill, notwithstanding the Conclusion, *ut supra*. But the Defendant waived his Demurrer without Costs, and pleaded to Issue,

Whether Ancient Demesne is pleadable after Imparlane.

Conclusion of Plea.

if

if Frankfee, or not: And yet *Hetley* saith, p. 117. It was agreed by all, that Ancient Demesne is a good Plea in Ejectment, but not after Imparlane. *Marsham* and *Allen's Case*, *Dyer* 210. *in margine*.

But now if a Man come in and pray to be made Defendant, and to plead specially Ancient Demesne, he shall do it; and it's now used of Course to plead Dilatories after Imparlane. 1 *Keb.* 361. *Holiday's Case*. But in 1 *Keb.* 706. by *Windham*, the new Defendant (one that prays to be made so) may plead Ancient Demesne after the former Imparlane, because it's not any Ouster of the Court of Jurisdiction. *Cur' è contra*. He ought to plead Not guilty personally, *Roch* and *Plumpton's Case*. And in 1 *Keb.* 755. *Snow* and *Cooley*. The Court will allow Plea of Ancient Demesne the same Term, contrary to the ordinary Rules in Ejectment. And in *Sutton* and *Courtney's Case* it was prayed by Council, That the Defendant might have Liberty to plead Ancient Demesne to a Declaration delivered before the Essoin of this Term, as of last Term, which the Court granted, and ordered him to attend the Secondary to settle the said Plea, which is usually done by making the Plaintiff deliver a new Declaration, as of this Term, and so the Plea cometh *quasi* before Imparlane. 2 *Keb.* 725.

In *David* and *Lyster's Case*, *Rolls* said, Ancient Demesne is a good Plea after Imparlane; for it goes in Bar of the Action itself, and not in Abatement of the Writ. *Stiles* 90.

Ancient

New Defendant not to plead Ancient Demesne after the former Imparlane.

Plea of Ancient Demesne allowed the same Term;

And how.

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Ancient Demesne was pleaded in Ejectment, That it is Parcel of such a Manor which is Ancient Demesne, &c.

Replicar', That the Tenements in Narration<sup>3</sup> are pleadable at Common Law, *absque hoc*, That those Tenements are Parcel *de antiquo Dominico*: Demurrer to it, and Judgment *pro Def.* Per Cur', the Traverse is ill; you ought to have traversed that the Manor was Ancient Demesne, and that shall be tried *per Doomsday-Book*; or else you ought to have traversed that those Tenements were held of the Manor. Showre 271. Hopkins and Pace.

### Plea *puis darrein Continuance*.

*Ejectione Firme* was brought for entring in Release *puis* to Three several Vills: The Declaration makes mention of no Vill in certain. The Defendant pleads a Release *puis darrein Continuance* before the Justices of *Nisi prius*. Per Cur' <sup>a</sup> they cannot Man cannot plead a Release at the *Nisi prius* take it. after Issue joined, for so none should have Judgment. When this Plea is pleaded, the Justices of *Nisi prius* cannot proceed to take the Inquest, and to this Plea of the Defendant, the Plaintiff cannot there reply, but he ought to reply in Bank. After Issue joined, and a *Venire fac'* awarded in such a Vill, the Sheriff returns *nul tiel Vill*; this is not good, for he cannot return that Thing which is contrary to the Issue to avoid the Trial, *a fortior'* one of the Parties cannot plead such Matter at the *Nisi prius*; the Authority of the Justices of the *Nisi prius* is to take the Verdict of the Jury, and no other Plea: And the Justices of

I. the

## The Law of Ejectments.

the *Nisi-prius* have no Power to amend any Fault in the Declaration; and when the Sessions end, their Authority ceaseth. *Vid. Cro. Jac. 261. contra. 10 H. 7. 21. 1 Bulstr. 92. Moor and Brown. Telv. p. 180. Cro. Jac. 261.*

In *Ejectione Firme* against two, one appears and pleads the General Issue, and Proceeds continues against the other, who now appears and pleads Entry *puis darrein Continuance* in Abatement of the Writ: Upon which the Plaintiff demurs; and after Issue was found for the Plaintiff, he shall not have Judgment, for the Demurrer is a Confession of the Entry, and shall abate his own Writ, for in this Action the Term is to be recovered; *aliter* if he had imparled. *Vide supra, Plea in Abatement. Dyer 226.*

**Release plead-**  
ed at the Day  
of the Argu-  
ment.

Upon a Special Verdict in *Ejectment*, and a Day given for Argument, before which the Defendant procures a Release of all Ejectments, and at the Day for the Argument, pleaded the Release *Puis darrein Continuance*, and good; *aliter* of a Release between the *Nisi-prius* and Day in Bank, because there he had no Day in Court, nor has he any Remedy but by *Audita Querela*, if the Plaintiff sued Execution. *2 Rolls Abr. 467. Wykes and Bunbury. Cr. Jac. 646. Stamp and Parker.*

*Entry puis  
dar' Cont'  
pleaded at the  
*Nisi-pr. u.*, the  
Plea is re-  
ceivable.*

Ejectment was brought of Lands in K. and two other Villages. The Defendant pleads Not guilty; and at the *Nisi-prius* pleaded, That the Plaintiff *Puis le darrein Continuance* entered into a Close, *parcel' præmissorum*, and him expelled; and a Demurrer upon it, because he declared not in which of the Villages the Close lay. *Per Cur'*, this Plea is receivable, for

for it is Matter in *fact*, and peremptory to him who pleads it; for as a Release or Matter in Bar may be pleaded, so may this, and is receivable at the Discretion of the Justices, if they perceive any Verity therein: So is *Rolls Abr.* 620. *Moor and Hawkins.* Cr. *Jac.* 261. *Yelv.* 180. *Moor and Hawkins.* 1 *Brownl.* 145.

In *Ejectione Firme* the Defendant may plead at the Assizes before the Justices of *Nisi prius*, That the Plaintiff had entred into Parcel of the Land mentioned in the Declaration *Puis darrein Continuance*, the Justices of *Nisi prius* may accept the Plea, and dismiss the Jury; and tho' they do not give any Day to the Parties in *Banco*, yet this is not any Discontinuance, altho' that the Plea be collateral; for the Day of *Nisi prius*, and Day in Bank, are one Day: For the Court in Bank gives Day to the Jurors in Bank, *Nisi prius Justiciarii ad Assisas venerint*, and to the Parties Day is given there absolutely. 2 *Rolls Abr.* 620. *Moor and Hawkins.* 1 *Rolls Abr.* 485. Sir Hugh Brown's Case.

In *Ejectione Firme*, after pleading Not guilty, a Release is pleaded *Puis darrein Continuance*, whereby the First Issue is discharged, which the Court granted. And tho' the Justices cannot try it at *Nisi prius*, unless they think it but Colour and insufficient, yet if he think it sufficient, he must sign a Bill of Exceptions, for the Trial is Error; and so *Yelv.* 181. And in this Case the Release of the Lessor of the Plaintiff is but Colour: Also the Party cannot demur to such Plea; also the Agreement to try and stand to the Title only, is no Cause to over-rule such Plea; and per

By this Plea,  
the First Issue  
of Not guilty  
is discharged.

Bill of Except.  
tion.

*Cur'*, the Plea certified hither was allowed, notwithstanding such Agreement being gained after. 3 Keb. 67. Mich. 24 Car. 2. Carter and Haggard.

Formerly Accord and Satisfaction a good Plea in Ejectment.

H. P. brought *Ejectione Firme* against R. C. and A. his Wife, and A. D. for an House in G. in, &c. upon Demise made by A. H. the 7th of April, 8 Jac. for Five Years, and that the Defendant the 10th of April in the same Year ejected him, &c. The Defendant pleads, That after the Trespass and Ejectment, (viz.) primo Maij Anno octavo supradicto apud G. prædict' talis inter R. C. præfat' H. P. tam de Transgressione & Ejectione prædict' quam de omnibus aliis querelis debitibus & debatis inter eos ante tunc habitis fact', sive propter al', &c. babeatur concordia, that in Satisfaction thereof the said R. one of the Defendants should pay to the Plaintiff 6 l. 10 s. at the Feast of St. Michael then next ensuing, and that for the true Payment of this he shall become bound in an Obligation of 13 l. and pleads Performance of this, and the Receipt of the said Sum at the said Feast accordingly. And it was resolved, That Accord in this Action is a good Plea, as being in Nature of a Trespass. And tho' the Term (which is a Chattel Real) shall be recovered as well as Damages, yet it's a good Plea; and Accord and Satisfaction for one shall discharge all the Trespassors and Ejectors. *Vid.* this Case argued, 2 Brownl. 128. 9 Rep. 77. *Henry Peyton's Case.*

But

But now the Rule is to stand upon the Title only.

*Aid Prier; where Aid shall be granted in this Action, and in what Cases not.*

The Defendant justified as in his Franktene-  
ment the Reversion to the King, and prayed  
in Aid of the King. *Per Cur'*, he shall not have  
Aid in this Action, which is as a Trespass up-  
on this Plea\*; for he needs no Aid of the King  
to maintain this Plea. So in *Allen and Hollo-*  
*well's Case*, the Defendant pleads, That the  
Queen was seized in Fee, and let it to *J. S.* for  
Years by Patent, who let it to the Defendant,  
and prays in Aid of the Queen; and it was  
ruled to be no Plea, because he is not imme-  
diate Tenant; wherefore a *Respondeas Ouster*  
was awarded. And in *Bridgman's Rep.* 87. it  
is agreed, That the Defendant shall not have  
Aid of the King, because he is not his imme-  
diate Tenant, and so no Privity between the  
King and him. And to the same Purpose is  
*Anderson's Case* in *Hardress's Reports*. The  
Defendant prayed in Aid of the King's Les-  
see for 99 Years for his Dutchy Land in Trust  
for the Queen, as part of her Jointure, and  
as Bailiff to them; and it was denied by the  
Court. And upon the General Issue it ap-  
pears not whether the Right will come in  
Question; and yet it's said in the Countess of  
*Kent's Case*. 3 *Jac. B. R.* That in *Ejectione*  
*Firme* the Defendant shall have Aid of the  
King, because by Intendment the Freehold  
shall come in Debate in this Action. 1 *Rolls*  
*Abr.* 407, 156. *Bennet's Case*, *Cro. El.* p. 374.

The Defendant shall not have Aid of the King, and why.

## The Law of Ejectments.

*Allen and Hollowell. Hardr. 179. Anderson and Arundel. 1 Rolls Abr. 148.*

Defendant  
shall have Aid  
of a common  
Person.

But Aid lies in *Ejectione Firme* (of a common Person) when the Title of the Land is to come in Question. And if a Man recover in *Ejectione Firme* against J. S. who dies, in a *Scire facias* against his Heir, the Heir shall have Aid of him in whose Title his Ancestor claims. 1 *Rolls Abr.* 161, 162.

A Writ not  
to proceed  
(*Regina inconsulta*) allowed.

In *Ejectment* the Defendant pleaded Not guilty, and after Issue joined, the Queen sent a Special Writ to the Court, reciting, That how the Defendant was Tenant in Tail with divers Remainders over, the Reversion to the Queen, and that her Reversion might be prejudiced by this Trial. Wherefore it was commanded then not to proceed to the Trial of this Issue, *Regina inconsulta*. And it was a Question much debated, whether this Writ were allowable or not, because it is a personal Action only. *Per Curiam*, this Writ ought to be allowed (as well as *Aid Prior*) because it appears to them, that the Queen may be prejudiced in her Title; and by the Writ there is a Recital of a Title in the Queen; and her Trial of Right is to be discussed in Chancery, where the Queen's Records are to prove her Title; therefore *per Curiam* we shall not proceed without a *Procedendo*. *Vid. 1 Anders. 280. Blofeld and Harris. Cro. El. p. 417. Sale and Barrington. Moor 421. mesme Case. Hardr. 428.*

In such Case  
where the  
King's Trial  
of Right to  
be dismissed.

Recovery and  
Execution in  
a former  
Action plead-  
ed in Bar.

In Trespass for breaking his Close, the Defendant pleads, That before this he had brought *Ejectione Firme* against the now Plaintiff, and recovered, and had Execution, &c. Judgment *si actio*. *Per Curiam*, it is a good Bar,

and

and the Conclusion of the Plea is also good. Judgment *si actio*, without relying upon the Estoppel. 1 Leon. p. 313. Kempton and Cooper.

*Ejectione Firme* was brought against Drake and Five others: Drake pleads Not guilty, the other Five *quoad 20 Acres* plead Not guilty; and as to the Residue that long Time before, &c. the Plaintiff in his Replication said, He was possessed till by the said Five Defendants, who pleaded in Bar, he was ejected; and by his Declaration he has supposed himself to be ejected by all the Six Defendants, and so a Departure from the Declaration in the Number of the Ejectors. But *Curia contra*: For Drake, by his several Issue which he has joined with the Plaintiff upon Not guilty, is severed from the other Five Defendants; and then when they plead in Bar, the Plaintiff ought to reply to them, without meddling with Drake. So in *Ejectione Firme* of 20 Acres, the Defendant as to 10 Acres pleads Not guilty, upon which they are at Issue; and the Plaintiff replies as to the other 10 Acres, and so was possess'd until by the Defendant of the laid 10 Acres he was ejected: This is good, without speaking of the other 10 Acres, upon which the general Issue is joined. 2 Leon. p. 199. Holland and Drake.

It was moved for the Defendant, that he might have Liberty to plead specially in an Action of Trespass and Ejectment, and not generally Not guilty, because there had been Matter given in Evidence at a former Trial, which ought not to have been. By Rolls, if the other will not consent, you shall not plead

In this Action  
not to plead  
specially  
without Con-  
sent of the  
Plaintiff.

L 4 specially,

## The Law of Ejectments.

specially, but proceed according to the Course of the Court. *Stiles Rep.* 412.

Defendant not to plead till Costs assessed in a former Action was paid, and Security for new Costs.

*Note,* The Defendant by Rule of Court was not to plead till Costs paid, assessed in a former Action on Nonsuit, and that another Plaintiff might be named, or that Security be given to pay the Costs, if the Plaintiff should be nonsuit again. *Stiles p. 433.*

*Bar or Recovery in one Ejectione, how far a Bar or Recovery in another.*

Bar in one *Ejectione Firme*, how a Bar in another.

It was a Question, Whether a Bar in one *Ejectione Firme* were a Bar in another? And Justice Berkley said, It was adjudged upon this Difference, That a Bar in one *Ejectione Firme* is a Bar in another for the same Ejectment, but not for another and new Ejectment. And in Godbolt's *Rep. Case 128*, in Trespass the Defendant pleaded that at another Time before the Trespass, he did recover against the same Plaintiff in *Ejectione Firme*, and demanded Judgment. *Per Cur'*, it is a good Plea *prima facie*, and that the Possession is bound by it, for otherwise the Recovery should be vain and ineffectual. And by *Anderson*, If two claim one and the same Land by several Leases, and the one recovereth in *Ejectione Firme* against the other; that if afterwards the other bringeth an *Ejectione Firme* of the same Land, the first Recovery shall be a Bar against him. *Per Rhodes*, a Recovery in an *ad terminum qui præteriit*, shall bind the Possession. *Godb. p. 109; N<sup>o</sup> 128. 3 Leon. 194.*

In Trespass for breaking his Close, the Defendant pleads, before this he had brought

*Eje-*

*Ejectione Firme* against the now Plaintiff, and recovered, and had Execution, Judgment *si actio*. *Per Cur'*, in 1 *Leon.* 313. *Kempton and Cooper's Case*, and 3 *Leon.* 194. the same is a good Bar, and the Conclusion of the Plea is also good, Judgment *si actio*, without relying on the Estoppel; and by Two Justices it is no Estoppel, for the Conclusion shall be Judgment *si actio*, and not *si serra respond'*, and it was well pleaded. For as by Recovery in Assise the Freehold is bound, so by Recovery in *Ejectione Firme* the Possession is bound. And by *Anderson*, a Recovery in one *Ejectione Firme* is a Bar in another, especially if the Party relieth upon the Estoppel; and altho' it be in an Action personal, and in the Nature of a Trespass, yet the Judgment is good, *Habebat possessionem termini sui*, during which Term the Judgment is in Force; and it's no reason he should be ousted by him against whom he recovered, for so Suits would be infinite; but this grave Advice is now laid aside. 4 *Leon.* 77. *Spring and Lawson.*

*Note*, In *Ejectione Firme* against two Defendants, one confesseth the Action, and the other pleads in Bar *Non Culp'*; *per Cur'*, tho' in Trespass against two, and the one makes Default, and the other confesseth the Action, he may well relinquish his Suit against him who makes Default, and proceed against the other which confesseth or pleads in Bar, because this Suit is only in point of Damages, but not so in Ejectment, he cannot relinquish his Suit against one, and proceed against the other; for if so, any Man may be tricked. 2 *Bulstr.* 113.

Two Defendants, one confesseth, the other pleads in Bar, he cannot leave the one, and proceed against the other.

## The Law of Ejectments.

Expiration of the Term in *Ejectione Firma*,  
is no Plea. *Latch* 106.

Upon a Trial at Bar between *Odil* and *Terril*, a Juror was challenged, for that he said to one of the Parties, *Provide you to pay, for if I am sworn, I will give the Verdict against you.* And that this is true, the Parties to whom the Words were spoken did offer to depose the same; and the Question was, If he should be suffered to swear this, he being one of the Parties? And he was allowed by the Court to be sworn to prove the Challenge good; and for this Cause the Triers found him not to be indifferent, and so he was withdrawn. Another Juror was challenged in this Case, for that he had bought Land of one of the Parties in the Suit, (*viz.*) of the Lessor, and that the Lessor did owe to this Juror 10*l.* and notwithstanding this Challenge, the Triers found him indifferent, otherwise *per Cur'* if the Juror had owed Money to one of the Parties. *1 Bulst.* 20, 21. *Odil and Terril.*

The Juror  
had bought  
Land of the  
Lessor.

## C H A P. IX.

of Challenge. What is Principal or not. Of Elisors. Of Venue. Where the Parish and Vill shall be intended all one. Where it shall not be de Corpore Comitatus. Where the Venire fac' is amendable. Venire fac' to the Coroners, because the Sheriff is Cousin to one of the Defendants. A Venire de Forest. Venire de Novo for Baron and Feme.

BY Coke in Guest and Bridgman's Case, Cousin to the Sheriff is not a principal Challenge, that the Lessor. Sheriff is Cousin to the Lessor in Ejectment, for the Lessor cannot hinder the Action of the Lessee (this is not Law). 1 Rolls Rep. 328. 2 Rolls Rep. 181. Banister's Case.

Venire fac' awarded to the Coroners upon Lessor Servitude that the Lessor was Servant to the Sheriff. Q. If it be a principal Challenge? If it be no principal Challenge, then is not the Writ well awarded, and is not aided per Stat. 32 H. 8. Cro. Jac. p. 21. Harebotle and Placock.

Challenge to the Sheriff, and a Venire fac' prayed to the Coroners, because the Sheriff is Cousin to the Plaintiff, and shews how; and because the Defendant did not deny it, a Venire fac' was awarded to the Coroners, and Judgment was arrested, because it was not a principal Challenge, and a Venire de Novo awarded to the Sheriff. 1 Brownl. 130. Cradock and Jones.

The Sheriff  
Cousin to the  
Plaintiff.

That a Juror  
had married  
the Cousin-  
german of A.

It is not any principal Challenge to a Juror (in *Ejectione Firme*), That he had married the Cousin-German of A. who was the Wife of R. from whom is descended H. from whom is descended B. who have the Reversion of the Land in Question after the Death of his Mother, who is to have an Estate for Life; this is not any principal Challenge, because the Estate of B. does not appear in the Record, and he had not the immediate Reversion. 2 Rolls Abr. 654. *Gabriel Dennis's Case.*

Elisors.

That the Lef-  
for of the  
Plaintiff is  
High-Sheriff,  
a principal  
Challenge.

Elisors.

In the Lord Brook's Case, the Court was informed, That the Lessor of the Plaintiff was High-Sheriff of the County, and that the Coroner was Under-Sheriff; and it was prayed that Elisors might return the Jury; but the Court would not grant it at the Prayer of the Defendant, though the Plaintiff offered to agree to it, it being in a Trial of *Nisi prius*; but had it been in a Trial at Bar, the Court would have granted it. But the regular Course is for the Plaintiff to pray it, or else the Defendant may challenge the Array at the Assizes; for it is a principal Challenge, that the Lessor of the Plaintiff is High-Sheriff, or of Kindred to the Sheriff. *Trin. 1657. Huc. 25. Moor 470. Rolls Rep. 320. 15 Car. 2. B. R. Duncomb and Inglesby.*

In *Ejectment* the Plaintiff suggesteth, that his Lessor the Sheriff, and Coroners, were Tenants to a Dean and Chapter, whose Interest was concerned, and prayed the *Venire fac' to Elisors*, and had it, being confessed by the Defendant; and the Court took it as a

prin-

principal Challenge. *Duncomb and Inglesby's Case.*

In *Ejectione Firme* the Array was challenged, because it was made at the Nomination of the Plaintiff, and by Consent of the Parties, two of the Attorneys of the Court did try the Array. The Trial of the Array is good, either by the Coroners, or by two Attorneys. *Godbolt 428. Williams and Lloyd. 2 Rolls Rep. 363, and 131.*

In *Ejectione Firme*, on *Non culp'* pleaded, it is not any Challenge to the Array, that the Sheriff is Cousin to the Lessor of the Plaintiff; for it does not appear that the Title of him in Reversion shall be in Question, for peradventure the Lease is not well made, or no Ejectment committed, and he in Reversion is not any Party to the Action. So in the said Case it shall not be any Challenge, although it appear to the Court by Averment that this Lease was made only in Trust, and to try the Title of the Plaintiff for the Cause aforesaid. But now in our feigned Ejectments it is otherwise, because the Title of the Lessor is only in Question. *2 Rolls Abr. p. 653. Sir Edward Kempston and Banister Cradock. Id. ibid.*

Ejectment for Lands in *Sussex* tried at the Bar, the Defendant challenged the Polls for Default of Hundredors, but did not shew it for Cause till the Pannel was perused.

*Per Hale, Chief Baron,* It is against the common Course to take a Challenge for want of Hundredors, when the Trial is at the Bar, upon a Jury returned at the Denomination of an Officer of the Court where there are

*Note.*

Challenge for  
Default of  
Hundredors  
on Trial at  
Bar.

but

but Four and twenty left by the Parties themselves. But if this Challenge be taken to the Polls, it must be taken presently, and the special Cause assigned, (*viz.*) want of Freehold there. *Hardr. p. 228.* Attorney-General and Pickering in *Scaccario.*

In *Ejectione Fine;* upon a Lease made in G. of Land in T. in G. *prædict'*, the *Venue* shall not be from G. but from T. for it shall be intended that T. is a Vill of G. *2 Rolls Abr. 620.* *Beachamp and Sampson.*

The Lease is made *apud Curdworth* of Lands lying in *Parochia de Curdworth prædict'*, the Issue was, *de Vicineto de Parochia de Curdworth*: The *Venire* is well awarded, [*prædict'*] is such an Averment, as that of Necessity it must be taken that *Curdworth* the Town, and *Curdworth* the Parish, are all one; and if so be the *Venire fac'* is of the one or of the other, it must be good. But if the Parish be a larger Continent than the Town, *aliter*, because it cannot be intended that more Towns were in the Parish, unless it were shewed on the other Side; and we are to judge by the Record, which proves the Town and the Parish to be all one. So in *43 & 44 Eliz.* in *Ejectment*, the Lease whereupon the Trial was had was made *apud Abingdon*, of Lands lying in *Burgo de Abingdon prædict'*. The *Venire* was, *de Vicineto de Burgo de Abingdon prædict'*. This is a good *Venire*, for [*prædict'*] makes this by Intentment of Law to be all one. *2 Bulst. 209.* *Vale and Field,* *2 Rolls Rep. 21.* *mesme Case,* *Cro. Jac. 340.* *mesme Case.*

In an *Ejectione Firme*, if the Plaintiff declare of a Lease made *apud Ickworth* of Land in *Berry* in *Suffolk*, and Not guilty pleaded, the *Venire fac'* shall be from *Berry*, and not from *Ickworth*; for the Issue of Not guilty refers to the Ejectment, which was where the Land lies. 2 *Rolls Abr.* 619. *Pell* and *Spurgeon*.

The Issue of  
Not guilty  
refers to the  
Ejectment  
where the  
Land lies.

The Award upon the Plea-Roll was *Ven' fac'* against both Defendants; they both plead amended. *Non culp'*. The first Process, (*viz.*) the *Habeas corpora* was against both, but the *Venire fac'* against one of them, only one of them being named in the Trial, and Verdict for the Plaintiff against both Defendants. *Per Cur'*, the *Venire fac'* was amended after Error brought, because *vitium Clerici*. 3 *Bulst.* 311. *Cranfeild* and *Turner*.

*Ejectione Firme* of Lands in *D.* and the *Venue* was from the Parish of *D.* and Verdict *pro Quer'*: It was objected as Error, for the *Venue* ought to be from *D.* and not from the Parish of *D.* for it may be the Parish extended into several Vills. But *per Cur'*, it is well awarded, for *prima facie* they shall be intended all one, if it does not appear to the contrary by Pleading; and it shall not be intended to extend into several Vills. *Jones Rep.* 205. *Gilbert and Parker.* *Moor* 797, 798, 837.

The Vill and  
the Parish in-  
tended all  
one.

If Ejectment be brought of Land in *Dale*, and there is a Parish called *Dale*, and a Vill called *Dale*, and a Vill called *Sale*, lying within this Parish; and the Land lies in the Parish of *Dale*, but not in the Vill of *Dale*, but in the Vill of *Sale*, the Parish of *Dale*: This is

## The Law of Ejectments.

is against the Plaintiff, for the Law delights in Certainty; for whensoever a Place is alledged generally in Pleading, without any Addition to declare the contrary, this shall be taken for a Vill, 1 Inst. 129. 11 Rep. 25. 6. accord'. The principal Case was ruled by Baron Denham, in *Nicholas and Plomer's Case*, at the Assizes at New Sarum, Circa 2 Car.

The *Venire fac' was*, *de Vicineto Parochia de Bredon*, which was ill; for the Lease and Ejectment are alledged to be at *Bredon*, which shall be intended to be a Vill, and the Lands are intended to be at *Workington* (which also shall be taken to be a Vill) in the Parish of *Bredon*: So that it appears to the Court, that there is a Town called *Bredon*, a Parish called *Bredon*, and *Workington* a Vill in the Parish of *Bredon*, and the Tythes are alledged to be in *Workington* and *Willesdon* (which also shall be intended a Vill) in *Parochia de Bredon*; so that the *Venue* ought not to have been out of the Parish of *Bredon*, *Workington*, and *Willesdon*. And though *Workington* and *Willesdon* are named Hamlets in the *Personam*, yet the Court ought to adjudge upon that which is alledged by the Plaintiff in his Count. 11 Rep. 25. 6. *Harper's Case*.

*Ejectione Firme versus B.* for ejecting him of certain Lands in *Creeting St. Mary's*, *Creeting St. Olaves*, and in *Creeting Omnium Sanctorum*; and the *Venire fac' was*, *de Vicineto de Creeting St. Mary*, *Creeting St. Olaves*, and *Creeting Omnium*, omitting *Sanctorum*. The Court blamed the Clerk for his Negligence. *Winch* 34. *Good and Bewry*.

In the *Venire fac'* one of the Pannel was named *Thomas Barker* of *D.* and in the *Distringas Jurat'* he was left out, and *Thomas Carter de D.* put in his Place; and at the *Nisi prius* *Thomas Carter* was sworn, and with others tried the Issue, *Per Cur'*, there is Difference between Difference in a Mistake in the Name of Baptism, and in Law between the Surname; for a Man can have but one a Surname and Name of Names, as *George* for *Gregory*. And being Baptism. sworn at the *Nisi prius*, it's a void Verdict. *Cro. El. p. 57. Displyn and Spratt.*

*Ejectione Firme* of a Lease apud *Denbam* in Lands of the Parish de *Denbam prædict'*; the *Venire* was de *Vicineto de Denbam*, it's good enough. The Parish and Village are intended to extend, and to be all one. *Cro. Eliz. 538. Bedel and Stanborough.*

The *Venire fac'* was ad faciend' *Jurat'* in placito *Transgressionis*, whereas it should have been in placito *Transgressionis & Ejectionis Firme*, and it was not amended; for though *Ejectione Firme* is but a Plea of Trespass in its Nature, yet the Actions are several, and therefore the *Venire fac'* ought to be accordingly. *Cro. Eliz. 622. Clerk's Case.*

*Ejectione Firme* of a Lease at *Mockas* in *Lower Mockas*. The Defendant pleads Not guilty, and found against him, and it was moved to be a Mistrial; for the *Venire fac'* was awarded from *Mockas*, where it ought to have been from *Lower Mockas*, the Issue being Not guilty. But if the Lease had been traversed, it had been otherwise. *Williams and Whitin.*

## The Law of Ejectments.

In *Ejectione Firme* the Plaintiff declares of a Lease of Land in *B. Pernomen of, &c.* in *B. C. &c.* The *Venue* from *B.* is good. 2 *Roll Rep.* 479. *Taylor and Lehn.*

*Venire fac'*  
amended.

The Appearance and Issue were in *Hil. I Jac.* and the Bail was *Craftino Pur'*, and thereupon was the Declaration, and Issue, and *Venire fac'* awarded, bearing Date the 23d of *January*, *I Jacobi*; and upon this *Distringas*, the 12th of *February*, moved in Arrest, that the *Venire fac'* was awarded before the Appearance and Declaration to try the Issue in the same Action, and cannot be good. *Per Cur'*, it was amendable; for the Roll is the Warrant of the *Venire fac'*, which being variant from it, the *Teste* thereof shall be amended to be subsequent to the Issue joined. And whereas the *Teste* was the 23d of *January*, which was *Sunday*, it shall be amended, it being but the Fault of the Clerk, and misawarding of Process, which is aided *per Stat. 32 H. 8. & 18 Eliz. Cro. Jac. 64. Dolphin and Clark.*

Another Person sworn on the Jury, who was not returned; it's no Error, because Estoppel.

*William Brown of Bradfeld* was returned upon the *Venire fac'* and *Hab' Corpora*, and *William Brown of Metfeld*, who was another Person, and not returned, was sworn; yet this cannot be assigned for Error, for it is against the Record, which is, that *William Brown of B.* was returned and sworn; and he is estop'd to say the contrary, for then every Record may be brought in Question upon such Surmise. *Cro. Jac. 244. Bow's and Cannington.*

A Vill and Parish are intended all one, unless the contrary be shewed. *Vide Cro. Jac. 150. Batch and Gilbert.*

The Court was moved to change the *Venue* in *Ejectment* laid in *London*, because the Lands in Question did concern the Poor in *London*; and therefore it was supposed they could not have an indifferent Trial. *Per Rolls*, the Action is local, and cannot be removed, except you draw it from thence by your Plea. *Stiles Rep. 395. Hunflop and Johnson.*

In *Ejectione Firme* upon a Lease made at *D.* Where it shall in *Comitat' E.* of Land called *S.* If Not guilty be pleaded, and a *Venire fac'* awarded *de Corpore Comitatus E.* there not being any *Vill* named wherein the Land lies, it is erroneous; because this lies in some *Vill*, out which the *Vise* ought to have come to have tried it, and in such Case it ought not to come *de Corpore Comitatus*, for this is larger. *Hob. p. 89. Rich and Sheere.*

*Venire fac'* awarded to the Coroners, *ita quod B.* one of the Coroners *se non intromittat*, because he was Servant of the High-Sheriff, who was Lessor of the Plaintiff: It was said, the same was no Cause of Challenge; but the Court conceived it was, being confessed. *Moor 623. Higgins and Spicer.*

In *Ejectione Firme* against Four, who plead Not guilty, if the Plaintiff suggest that the Sheriff is of Affinity to one of the Defendants, shewing how, and upon this prays a *Venire fac'* to the Coroners, and the Defendant does not deny it, and upon this the *Venire fac'* is awarded to the Coroners, it is well awarded. For although none of the Defendants may

challenge the Array, because the Sheriff is of Affinity to one of the Defendants, yet the Plaintiff ought at the Trial either to challenge the Array, and so delay himself, or he ought not to try this during the Time that he is Sheriff, which would be a great Delay. 2 Rolls Abr. 668. *Fox and Shepheard in Exchequer Chamber.*

*Vide Raymund 572.* Consent may make a Trial had in a foreign Country good.

*Vise de Forresta.*

In *Ejectione Firme* of three Acres of Land in *Forresta de K. in Com'*, &c. If the Defendant plead *Non culp'*, the *Venue* may be in *Vicineto Forrestæ*; for this is *Lieu connu*, and by Intendment, forasmuch as the Defendant had not pleaded this in Abatement, this is out of any Parish or Vill. 2 Rolls Abr. 621. *Phillip and Evans.*

The Wife found Not guilty, and a special Verdict as to the Baron, which was insufficient, a *Ven' fac'* *de novo* awarded for both, and why.

In *Ejectione Firme* against Baron and Feme, on Not guilty pleaded, and a *Venire fac'* granted, the Jury find the Wife Not guilty, and find a special Verdict as to the Husband, which special Verdict is afterwards adjudged insufficient, a *Venire fac' de novo* shall be awarded for both, as well the Wife as the Husband. And upon this new Writ the Wife may be found guilty, because the Record and Issue is entire; and for this their Verdict is insufficient in all, and void. *Vide infra, Tit. Special Verdict.*

## C H A P. X.

Of joining Issue and Trial, and Bill of Exception. In what Cases there shall be Amendment.

THE Record of the *Nisi prius* was amended by the Plea-Roll. 1 Brownl. 133. Gaff and Randal.

Issue was joined, the Defendant pleads Not guilty, and it was enter'd, and the aforesaid Lessor likewise, where it should have been & prædict' *Querens similiter*, and it was amended. So & prædict' *Thomas similiter*, where it should be prædict' *Johannes similiter*, and it was amended. 2 Brownl. 102. *Weeby's Case*, 2 Roll. Abr. 199.

The Issue was Not guilty, and a *Venire* awarded, returnable 3 Trin. and the Essoin adjourned by the Plaintiff till Michaelmas Term; and at the next Assizes the Plaintiff, notwithstanding the Essoin, and the adjourning it, procured a *Nisi prius*, by which it was found for the Plaintiff. And per Curiam, no *Nisi prius* ought to issue out in this Case, because the Plaintiff himself by the adjourning the Essoin, cast by the Defendant until Michaelmas Term, had barred himself of all Proceedings in the mean Time. And the Words in the Stat. W. 2. c. 27. are Postquam Stat. W. 2. aliquis posuerit se in aliquam inquisitionem ad prox' c. 27. diem allocet' ei Essoin'; import, That the Essoin shall not be taken at the Return of the Process against the Jury, although the Jury be

M 3 ready

ready at the Bar. But then it was surmised, that the Defendant was not essoined, for the Name of the Defendant is *E. H.* and it appeared at the Trial, that *E. K.* was essoined, and the Court denied to amended it, and there was no Essoin, and so no Adjournment; and the Plaintiff was at large, and Judgment *pro Quer'*. Note, No Statute gives Amendment but in the Affirmance of Judgments and Verdicts, and not in Defeasance of Judgments and Verdicts. 1 *Leon.* p. 134. *Woodel and Harel.*

In Dyer 89. the Plea was, *Quod non ejicit Querentem de, &c. modo & forma,* it was moved there, that it is not any Plea; and yet *Dyer, Vide 121. b.*

The Defendant in any Case of Misdemeanour may say generally *Non Culp'*, or traverse the Point of the Writ, as *ne forga pas, non ejicit, non rapuit, non manue- nuit.*

In what Case  
no Verdict  
shall be en-  
ter'd.

In *Ejectione Firme* the Parties were at Issue, and by the Order of the Court the Trial was stay'd, yet the Plaintiff privily obtained a *Nisi prius*; and the Chief Justice being informed thereof, awarded a *Supersedeas* unto the Justices of Assize, before whom, &c. and yet the Inquest at the Instance of the Plaintiff was taken, and found for the Plaintiff; and all this Matter was shewed to the King's-Bench. And per Cur', No Verdict shall be enter'd on the Record, nor any Judgment on it. 2 *Leopard 167. Feild, Leich and Cage.*

*Ejectione Firme* against *Drake* and Five others. *Drake* pleads Not guilty, and others pleads; the Plaintiff replies, and so a De-  
murrur.

mur. *Per Cur'*, Seeing that one Issue in this Action was to be tried between the Plaintiff and *Drake*, and although the Plaintiff offered to release his Damages on the Issue joined, and to have Judgment against the Five Defendants who had demurred; yet the Court was clear of Opinion, That no Judgment should be given upon the said Demurrer, till the said Issue was tried. For this Action is in *Ejectione Firme*, in which Case the Possession of the Land is to be recovered; and it may be, for any Thing that appeareth, that *Drake*, who has pleaded the general Issue, has Title to the Land. But if this Action had been an Action of Trespass, there in such Case, *ut supra*, upon Release of Damages, and on the Issue joined, the Plaintiff shall have Judgment presently. 2 *Leon.* p. 199. *Holland and Drake.*

In *B. R.* after Issue joined in *Ejectione Firme*, and the Jury ready to try it, there comes a Writ to the Justices that they should not proceed, *Regina inconsulta*, in the Nature of *Aid prier*, and it was allowed. *Moor* 421, 583. *Nevil and Barrington.*

A Suit in the spiritual Court *pro jacitacione Maritagii*, stays not Trial. 1 *Keb.* 519.

Ejectment in *Brecknockshire*; it was tried in *Monmouthshire*; since the Stat. 27 H. 8. *Stat. 27 H. 8.* it is a Mistrial, for *Monmouthshire* was made Marches. an English County but in Time of Memory by that Statute, and so it ought to have been tried in *Herefordshire*. *Hard,* 66. *Morgan's Case.*

One Defendant pleads  
Not guilty,  
the other de-  
murs; no  
Judgment up-  
on the De-  
murrer till  
the Issue be  
tried.

Error of a Judgment in *B. R.* in Ireland in Ejectment, after Verdict, for Lands in the County of *Clare*: It was excepted, That the Verdict was given by a Jury returned by the Sheriff of the Queen's County, *Hob.* p. 5.

Consent to alter the Trial entered upon the Roll.

*Sed non allocat'*; for the Consent of the Parties to this Trial was enter'd upon the Roll, which was not in *Hobart*, but only in a proper Rule of Court; and therefore the Judgment there was reversed, as *1 Rolls Rep.* 28, *Crow and Edwards*. With this accords *Cro. Eliz.* 664. Sir *Thomas Jones* 199. *Devoren and Walcott*.

New Trial denied, and why.

A new Trial was denied in Ejectment, though the Verdict was given contrary to the Direction of the Court in Matter of Law, because it was a Trial, and because it is not final. Sir *Thomas Jones* 224. Earl of *Thanet's Case*.

Ejectment was brought for Lands in the County of *Clare* in Ireland. Issue was joined on Not guilty, and then there is an Entry on the Roll, *Et super hoc pro indifferenti triatione exitus praedict' inter partes praedict' eadem* *partes ex eorum unanimi Consensu, & Assensa,* *& Consensu eorum Conciliat' & Attornat', &c.* *petunt Breve Dom' Regis Vic' Com' Cork diri-* *gend' de Venire fac' duodecim de corpore Comi-* *tatus sui ad triandum exitum predict'*. *Ideo prae-* *ept' est, &c.* Then there is a *Nisi prius* granted to the County of *Cork*, and the Cause was there tried, and a Bill of Exception put in; and on Debate in *B. R.* Judgment was given for the Defendant. The Plaintiff brings a Writ of Error, whether Consent can make this Trial in a Foreign County good:

And

## The Law of Ejectments.

169

And per Cur', the Trial is well had, Raym. 372.

Viscount Clare and Lynch. Hob. 5. 1 Rolls

Rep. 166, 363. Palmer 100.

At the Assizes in Northumberland, 15 Car. 2. Nonsuit at Plaintiff in Ejectment was called and non-  
sued, and this enter'd upon the Record  
before the *Venire* or *Distringas*, &c. was put  
in, and this appeared by the *Postea* produc-  
ed; and so the Justices of *Nisi prius* had  
not Power of Nonsuit, for their Power is by  
the *Hab' Corpus*; and therefore the Court  
discharged the Nonsuit, and gave Leave to  
the Party to proceed again. Sid. 64. Tom-  
son's Case.

*Nisi prius*  
discharged.

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C H A P.

## C H A P. XI.

Of joining Issue and Tryal. Where Issue in Ejectment shall be tried in other County than where the Lands lie. Trial by Mittimus in the County Palatine: Who shall be a good Witness in this Action or not; and what shall be a good Evidence in this Action. Trustee. Parishioners. Copyholder in Reversion after Estate Tail. Of the Witnesses selling Part of the Land before Trial. Matters of Record. Good Evidence or not. Matters of Fact. Copies. Copy out of a Leiger-Book. Copy of Court-Roll. Ancient Deed. Bills, Answers, and Depositions in Chancery. Inspeximus. Lease made upon an Outlawry. Deed of Bargain and Sale. A former Mortgage. What is to be proved in Evidence for a Rectory. Probate of a Will. Evidence of a dead Person. Fraud given in Evidence. Recital. Counterpart. Patron. Elegit given in Evidence. Bail. Of Witnesses examined in the Country by reason of Sickness. Subpoena ad Testificandum. Inhabitants of a Corporation. Examination of Witnesses in perpetuum rei Memoriam. A former Verdict. If in Evidence it appears the Title is in a Stranger, the Direction of the Court in that Case. Syrograph of a Fine, and constant Enjoyment. Inrollment of a Deed. Doomsday-Book. Variance. What Matter may or must be given in Evidence, and what may or must be pleaded. What Evidence the Jury shall have with them. Vari-

riance of the Evidence from the Declaration ; or what Evidence shall be sued to maintain the Issue. Of Demurrer to Evidence. Exemplification of a Verdict. Where Issue in Ejectment shall be tried.

IT ought to be in the County where the Land lies. If *Ejectione Firme* be brought, and laid in Com<sup>d</sup>. for Lands lying in another County, although this be by Assent of the Parties, and the Defendant pleads Not guilty, and Verdict and Judgment given for the Plaintiff, yet this is Error ; for this is against the Law, which cannot be altered by Assent of the Parties : But upon View of the Record, if it doth not appear to the Court that the Land lies in another County, they will not reverse the Judgment for that Cause. And it was ruled to be Error in the Exchequer-Chamber in the Bishop of *Landaff's* Case. But in Sir *Thomas Jones's* Rep. *Devoren* and *Walcot's* Case, it is held, That a Trial by Consent upon the Roll in other County than where the Land lies, is good in Ejectment. 1 *Rolls Abr.* 787. 2 *Keb.* 260. Sir *Thomas Jones* 199. *Devoren* and *Wal.* Ejectment.

A Trial by Consent in other County than where the Land lies, is good in Ejectment.

In an *Ejectione Firme* in *London* upon a Lease made of Lands in *Middlesex*, if the Defendant plead Not guilty, this may be tried in *London*, because the Counties may not join, although the Jury ought to enquire of the Ejectment which was in *Middlesex*. 2 *Rolls Abr.* 603. *Herbert and Middleton.*

Trial in London of Lands in Middlesex.

But

Moved in Arrest of Judgment, that the Lease was made at *B.* of Lands in another County, and the Plaintiff was not in Possession.

In the King's Case, Trial shall be in the Exchequer, though the Land lie in Wales.

Trial by *Mittimus* in the County Palatine.

But in *Flower and Standing's Case* in *Ejectment*, it was moved in Arrest of Judgment, That the Lease is made at *B.* of Lands in another County; which was moved to be ill, it appearing that the Plaintiff was not in Possession: *Sed non allocatur*, for this is Matter of Evidence, and it shall be intended it was after Verdict, and so is the common Course. *Mich. 20 Car. 2. B. R.*

In Ejectment one may not have Privilege of Trial of Lands in *Wales* in the English County next adjoining, for they are to be tried in the County where the Land lies; otherwise it is, if the King be Party, it shall be tried in the Exchequer. This Action was brought by one of the Ushers of the Exchequer by Privilege. *Savile 10, 12.*

Ejectment is brought against one in *Custodia* in *B. R.* of Lands in the County Palatine, and the Action was laid in *B. R.* and the Record was sent down by *Mittimus* from *B. R.* and special Indorsement of the Postea; and therefore one prayed Judgment against his own Ejector in an Action of Lands in the County Palatine of *Chester*, which the Court granted, because when the Defendant hath pleaded to Issue, they may try it by *Mittimus* in the County Palatine. *Redvish and Smith's Case. M. 15 Car. 2. B. R. Holloway and Chamberlain.*

Action on the Case on feigned Issue out of *Chancery*. *Per Twisden Justice*, the Lands being in the Isle of *Wight*, and the Jury of *Surrey*, this Trial is not allowable to try *Conveyata*, or not, this being a Windlace to try

try Ejectments in another County. But in 1 Ventr. 66. a Title of Land was tried out of the proper County upon a feigned Wager, whether well conveyed or not, (this is the usual Course of Issues directed out of Chancery). 2 Keb. 634. Meres's Case, 1 Ventr. 66.

*Who shall be good Witnesses in this Action, or not.*

It is agreed, That a Trustee cannot be a Witness concerning the Title of the same Land, the Interest in the Law being lodged in him. But by Hales, a Trustee may be a Witness against his Trust. 2 Sid. 109.

In Ejectment the Plaintiff challenged B. a Witness to a Devise, because he was Trustee in a Will, and had an Annuity; but he having released both before the Suit, the Court held him to be a good Witness, or if he hath received it, and though it be after the Action brought. Sid. 315.

Interest in Equity disables a Man to be a Witness; but one who hath an equitable Collateral Title may be a Witness.

Parishioners may be a Witness to a Devise Parishioners, by which the Parish claims Lands to the Relief of the Poor.

Exception was taken against a Witness produced to prove the Lease of Ejectment, the Inheritor: But it was urged by the other Side, That the Defendant did claim under the same Person that the Plaintiff did, and so the Witness was

## The Law of Ejectments.

was admitted to be sworn. *Stiles Rep.* 482. *Fox and Swann.*

### Coparceners.

One Coparcener cannot be Evidence for another in Ejectment, because she claims by the same Title, though she is not Party to the Suit, but the Daughter of her Sister may be sworn; for although she be Heir, yet her Mother may give the Lands to whom she will, being Fee-simple. *Pasch.* 13 Car. 2. B. R. *Truel and Castel.*

### Copyholder in Reversion after an Estate Tail.

In Ejectment of Tythes, the Plaintiff excepted against a Copyholder in Reversion after an Estate Tail, for a Witness to prove the Boundary of a Parish, and he was set aside for the Possibility which makes him partial. *Mich.* 20 Car. 2. B. R. *Hitchcock's Case.*

### Trespass.

In Ejectment of the Manor of S. on Issue out of Chancery to try the Number of Acres, the Defendant excepted to a Witness that had been a Trespassor, as Servant to my Lord Lee in the Lands in Question, an Action being depending: The Court set him aside, and thereupon the Plaintiff was nonsuited. *Mich.* 20 Car. 2. B. R. *Tuck and Sibley.*

### Estate at Will.

Exception was taken against a Witness to prove the Execution of a Deed by Livery and Seisin, because he had an Estate at Will made to him of Part of the Land; but it was disallowed. *Vide Mod. Rep.* 21, 73, 74, 107. *Hob* 92.

### Executor of the Grant of a Rent.

In Ejectment at Trial at Bar, the Title of the Lessor of the Plaintiff was upon the Grant of a Rent, with Power to enter for Non-payment, the Executor of the Grantor was

was produced as a Witness for the Defendant. It was objected against him, That in the Grant of the Rent, the Grantor covenanted for himself and his Heirs to pay it, and so the Executor being obliged, he was no competent Witness. *1 Vent. 347. Cook and Fountain.*

On a Trial at Bar, *per Cur'*, if one of the Witnesses had Part of the Lands in Question, and he sells or disposeth of it after his coming to London, or at any Time after he had Notice of Trial; he shall not be received to give Evidence, though he sell *bona fide*, and upon a valuable Consideration: And although he himself be not Occupier of the Land, nor had been after the Writ purchased, but another by his Commandment, the Court will not suffer him to be a Witness, because if Verdict pass against him, he who acted by his Commandment may charge him in Action on the Case; but upon Examination it appearing, that the Witness claimed an Estate for Life by Title *Paramount* both their Titles, (*viz.* Plaintiff and Defendant) he was sworn. *Syderfin, p. 51. Wicks and Smallbrok's Case.*

The Witness  
sells Part of  
the Land be-  
fore Trial.

Witness  
claimed E-  
state by Title  
*Paramount*  
both their  
Titles.

One who had  
Estate at Will  
to prove a  
Livery.

Exception was taken against a Witness to prove Execution of a Deed of Feoffment by Livery and Seisin: Two Witnesses were subscribed to prove the Livery and Seisin; afterwards one of those Witnesses had an Estate at Will made unto him of Part of this Land; and because being produced as a Witness to prove the Execution of the Deed, was excepted against, because he was a Party now interested in the Land, and so his Oath was to make his own Estate good. But *per Cur'*, he

## The Law of Ejectments.

he may well be sworn a Witness to prove the Livery and Seisin, this being in Affirmance of the Feoffment. *1 Bulst. 203.*

Father a Witness for the Son.

The Father testified a Deed in Pursuance and Affirmance of a Lease made to his Son by himself, which the Court allowed, his Interest being pass'd away. *1 Keb. 280. Fay and Ryder.*

In Ejectment on Extent on Mortgage at Trial at Bar, the Defendant excepted to the Plaintiff's Witness, because his Father paid a Debt as Security with the Defendant's elder Brother for the Defendant's Father; but there being no Counterbond, and therefore doubtful in Equity, whether he as Heir could recover any Thing against the Defendant as Heir, the Court swore him. But if he were to let himself into a certain Interest, though but in Equity, the Court will set him aside. *2 Roll. 345. Vincent and Turrinsharp.*

In Ejectment, one *Baker*, who had been Sollicitor for *P.* the Defendant was produced as a Witness concerning the Rasure of a Clause in a Will supposed to be done by *P.* The Question was, If he ought to be examined about this, because having been Sollicitor, he was obliged to keep his Secrets? But it appearing that *B.* had made this Discovery to him, about which he was now to give his Evidence, before such Time as he had retained him, *Per Cur'*, He was sworn; *aliter*, if he had been retained his Sollicitor before. The same of an Attorney or Councillor. *1 Vent. 179. Cutts and Pickering.*

In what Case  
Sollicitor, &c.  
not to give  
Evidence  
against his  
Client.

Wh

# The Law of Ejectments. 177

*What shall be good Evidence in this Action,  
and what not.*

There are several Cases in our Books concerning Evidence upon Leafes made to try the Title, which I shall not at present meddle with, they being of no great Use since the Alteration of Practice in this Action; but I shall mention those which are of daily Use, and principally aim at such Evidence which is allowed or disallowed, as to the proving of Title to Land, without the Knowledge of which there are infinite Failures and Nonsuits in this Action; and I shall first begin with Matters of Record, and then Matters of Fait, Bills, Answers, Depositions, and other Sorts of Evidences, as to Antiquities, Pedigrees, and what Evidence a Man must have to make Title in several Cases. And Lastly, treat of Demurrers upon Evidence and Exemplifications of Verdicts.

## *As to Matters of Record.*

If a Deed be pleaded, the Party must shew Record shew. it in Court; so if a Record be pleaded, it ed in Court. must be *sub pede sigilli*; but Evidence is not absolutely necessary to shew either, if it can otherwise be proved to a Jury, as in *1 Vent.* 257. In Evidence for Lands in Ejectment in Ancient Demesne, the Court admitted of Evidence to prove a Record to cut off the Intail (which was lost), and it may be proved to a Jury by Testimony; as the Decree in *Henry the Eighth's Time*, for Tythes in *London*, is lost;

lost; yet it hath been often allowed there was one. And further in this Case it appeared, That Part of the Land was leased for Life, and the Recovery with a single Voucher was suffered by him in Reversion, and so no Tenant to the *Præcipe*; yet in regard the Possession had followed it a long Time, the Court would presume a Surrender.

Long Possession.

Copy of a Record.

The Copy of a Record may be shewed and given in Evidence to a Jury, for Records are of so high a Nature, and have such great Credit in the Law, that they cannot be proved by any other Means than by themselves, and no Rasure or Interlineation shall be intended in them; and therefore a Copy of a Record being testified to be true, is permitted to be given in Evidence; but the sure Way is either to exemplifie it under the Great Seal, or at least under the Seal of the Court. *10 Rep. Leyfeld's Case.*

Exemplification.

In Ejectment for Lands in Brecknockshire; Upon Not Guilty and Trial there, the Defendant gave in Evidence, a Recovery in a Writ of *Quod ei Deforceat*, which is their Writ of Right at the great Sessions there; and Issue being tendered therein, the Defendant produced an Exemplification of the Record under the Seal of the great Sessions, but not the Record it self. The Plaintiff demurs to the Evidence, and the Question was, Whether the Exemplification maintained the Issue or not? It was agreed, That a Sworn Copy of a Record in Wales might be given in Evidence, but not an Exemplification, because the Court here ought not to take Notice of such an inferior Seal; but if it were exemplified

fied under the Great Seal, it would be Evidence and Proof, tho' the Record it self were lost. And yet *Whitehead's Case* was, That an Exemplification under the Seal of the Mayor of *Bristol*, of a Recovery suffered there under the Town Seal, should be given in Evidence, tho' the Record it self could not be found.

*Note*, It must be given in Evidence in the like Manner as it is to be pleaded, and that is under the Great Seal. *Hardress* 118, 119, 120: *Henry Olive versus George Gowin*. And by *Hale*, Exemplification of a Recovery in the Marques of *Winchester's* Court, in Ancient Demesne was allowed because it was ancient. One had gotten a Presentation to the Parsonage of *G.* in *Lincolnshire*, and brought a *Quare Impedit*, and the Defendant pleaded an Appropriation, and there was no Licence of Appropriation produced, but because it was ancient, the Court will intend it; and in an ancient Recovery, they would not put one to prove Seisin of a Tenant in a *Præcipe*.

*Mod. Rep.*

The Scyrograph of a Fine may be given Scyrograph in Evidence, (but not delivered to the Jury, of a Fine.

*2 Sid. 145, 146.)* in a general Issue in Assize.

*Plowd. Com. 411.*

*Note*, If a Fine be given in Evidence with Fine and Five Years Nonclaim, the Fine must be shewed Nonclaim. with Proclamations under Seal, and the Scyrograph will not serve.

A Fine or Recovery may be found by the Fine, Record Jury, without shewing it under Seal; but they very. cannot find against what is admitted by the Record. *Sid. 271.*

**Copy of a Recovery.**

The Copy of a Recovery was suffered to be given in Evidence, the Recovery it self being burnt. *Mod. Rep.* 117. *Green and Proud.*

**No Tenant to the Præcipe proved.**

The Court allowed an old Recovery, tho' no Tenant to the *Præcipe* could be proved, but it shall be intended. *Cro. Jac.* 455. *Mod. Rep.* 117.

Nothing may be delivered in Evidence to a Jury, but that which is of Record or under Seal, but by Consent. *2 Sid.* 145.

As to Letters Patents, *Vide infra Deeds Dyer* 167. The Jury find the *Constat* of Letters Patents.

**Inspectimus.**

One may not shew in Evidence to a Jury an *Inspectimus* of a Deed inrolled in *Chancery*, if it be not a Deed of Bargain and Sale inrolled there; for if it be a Deed of Feoffment, the Party must shew the Deed it self, for the *Inspectimus* is no Matter of Record. *Stiles Rep.* 445. But by *Rolls*, tho' the *Inspectimus* be the *Inspectimus* of the Inrolment, and not of the Deed it self, yet if it be an Ancient Deed, it may be given in Evidence.

**Conviction of a Recusant, the Record being burnt, proved in Evidence.**

The Earl of—— being a Popish Recusant convict, presented the Lessor of the Plaintiff to a Rectory, who was instituted and inducted, but the Record of the Conviction was burnt (as was supposed) in the Fire at the Inner-Temple. The Defendant offered to prove it by the Estreats thereof in the *Exchequer*, and by the Inquisition found and returned here of Recusants Lands. *Per Hale & tor Cur'*, in such a Case as this a Record may be proved by Evidence, because the Conversion here is not the direct Matter in Issue; as was

Sir

Sir Paul Pinder's Case in an Action of Trover and Conversion for Goods, the Proof depended upon a *Fieri facias* and a *Venditioni exponat*; and yet in that Case, because the *Fieri facias* could not be found upon Record, it was admitted to be proved in Evidence. *Hardr. 323. Knight and Dawler.*

*Fieri fac'* pro-  
ved in Evi-  
dence.

But when he that sues an *Elegit*, brings an *Elegit* must be Ejectment to try the Title, he must in Evidence shew the *Elegit* filed.

A Transcript of a Record, or Inrolment of a Deed, may be given in Evidence, for they are Things to be credited, being made by Officers of Trust, but Inrolment of a Deed which needs no Inrolment, is no Evidence.

In Ejectment of Lands in the Parish of *Long Hope*; the Defendant pleads that they are Part, and held of the Manor of *Long Hope*, which is *Ancient Demesne*; and on Issue thereupon *Doomsday-Book* was brought in, by which it appeared, That the Manor of *Hope* is the Land of *W. de B.* who held of the King; which per *Curiam* doth not maintain the Issue, unless the Defendant had pleaded further, that the Lands are as well known by the Name of *Hope*, as *Long Hope*; this Book is the Trial, and the Court cannot take Notice of the same. *Respondeas Ouster. 1 Keb. 520. Holdy and Hodges.*

*Doomsday-*  
*Book.*

## Matters of Fait.

As for Deeds shewed forth, and given in Evidence, the Learning thereof is excellently delivered in Dr. Leyfeld's Case, 10 Rep.

It is a Maxim in Law, That *he which is Party or Privy in Estate or Interest, and he that justifies under him, shall shew the Original Deed to the Court*, for this Reason; because to every Deed Two Things are requisite: 1. That it be sufficient in Law, and this is called the Legal Part, and the Judgment of this belongs to the Judges. 2. The other concerns Matters of Fact, (*viz.*) if it were sealed and delivered, and this is tried *per Pais*; or whether it be rased or interlined, or upon Limitation, Condition, Revocation, and the like. Therefore it hath been always thought dangerous to permit any upon the General Issue to give in Evidence, That there is such a Deed which they have heard or read, or to prove it by a Copy. But in Cases of Extremity, as where Deeds are burnt by Fire, upon the General Issue the Judges will suffer to prove a Deed to a Jury by Testimony.

Deed proved by Copy or Testimony.

And what hath been said as to the Legal Part of a Deed, holds as to Letters Patents.

Deed cancell'd.

A Deed cancelled by Practice, was allowed to be read in Evidence in Action under that Deed, the Practice being proved. *Hetley 138.*

Lease and Release.

Lease and Release were given in Evidence to intitle the Plaintiff, and they were both named *bæc Indentura*, and were not indented, yet good by *Hale, Norf. Assizes, 1668. Bryant's Case.* In *Negus and Reynell's Case*, in Evidence to a Jury, it was held, 1. That a Proof that there was a Revocation, is sufficient for the Heir, without producing the Deed it self. 2. A Lease recited in the Release,

lease, was admitted to be proved by Witnesses to the Release, without shewing the Lease it self, which was imbezelled by the Lessor of the Plaintiff, *P. 13 Car. 2. B. R.*

And the Copies of Deeds have been admitted in Evidence, the Original agreed to be burnt. So in Ejectment at the Bar, a Copy of a Deed burnt, made by the Witness, to carry about to Council, was allowed for Evidence; so was *Doufe's Case at Oxon*, and *Thyn's Case*. The Testimony of a Witness of the Contents of a Deed burnt, but such Witness was refused at *Lent Assizes by Windham*, tho' the Deed were in the Adversary's own Custody. *Mod. Rep. p. 4. Mic. 21 Car. 2. B. R.*

It is said, That a Copy of a Deed is good Evidence, where the Defendant hath the Deed, and will not produce it. *Mod. Rep. 2 Keb. 483. 15 Car. 2. Stroud and Hill.*

One claimed under a Lease for Years of a Prebend, &c. and after he claims under a Lease from a Nominal Prebendary thereof, founded in the Cathedral Church of *Lincoln*; and he offered (at a Trial at Bar in Ejectment) to read a Copy of a Lease out of the Copy out of  
a Leiger-  
Book no Evi-  
dence. *Leiger-Book of the Dean and Chapter of Lin. coln*, but it was disallowed *per Curiam*; for the Book it self is but a Copy, and a Copy of a Copy is no Evidence. *P. 27 Car. 2. B. R. Cotterel's Case.* Leiger-Books and Paper-Books cannot be exemplified, but when offered in Evidence, must be produced themselves. *Hardr. 117, 118.*

## The Law of Ejements.

Recital of the Lease.

The Recital of a Lease, without shewing it, ruled to be no Evidence upon a Demurrer. *R. Entr. 318. 1 & 2 P. & M. Rot. 13. B.R. cited. Hardr. 119, 120.*

Counterpart of a Lease.

A Copy of the Counterpart of a Lease, the Lease being lost, allowed to be Evidence.

Seals broken off.

Tho' the Seals be broken off a Lease, yet the Deed may be given in Evidence. *1 Mod. Rep. fol. 11. Q. if the Deed be pleadable.*

Copy of Court-Roll.

A Copy of a Court-Roll may be given in Evidence, where the Rolls are lost or not lost. *15 Car. 2. B. R. Snow and Cutler.*

Difference between pleading a Deed, and giving it in Evidence.

For if a Deed be pleaded, the Party must shew it in Court; but if it be given in Evidence, it is not necessary to shew it, if it can otherwise be proved to a Jury; for Witnesses may prove the Contents of a Deed or Will, and so the Jury may find them, the Deed or Will not being found in *bac verba*. *Stiles p. 34. Wright and Pinder.*

A Deed made before Time of Memory.

A Deed made before the Time of Memory, may be given in Evidence, tho' it cannot be pleaded. An ancient Deed is good Evidence without proving, or Seal to it. *P. 17 Car. 2. B. R. Wright and Sherrard.*

Ancient Deed.

A Will, under which a Title of Land is made, must be shewed it self; and the Probate is not sufficient: *Contra*, if it were on a Circumstance, or as Inducement, or that the Will remain in Chancery or other Court by Special Order of such Court. *1 Keb. 117. Eden and Thalkill. 2 Rolls 678.* So is Brett's. A Probate of a Will by Witnesses for Lands, is not Evidence at Common Law. And nothing can be given in Evidence against the Probate of

Will Probate.

Will, but Forgery of it, or its being obtained by Surprise, and so it's Conclusive. *Raym.*

405.

Error was brought of a Judgment in C. B. in Ireland in *Ejectment*: The Question was upon a Bill of Exception, for that the Justices of the Bench there would not direct the Jury, that the Probate of a Will before the Archbishop of Canterbury (the Testator dying in his Province) and also the Bishop of Fernes, were sufficient and conclusive Evidence, but only affirmed it was good Evidence, leaving it to the Jury. To which the other Party shews in Evidence, Letters of Administration of the Goods under Seal of the Primate of Ireland. The Title was for a Lease for Years in Ireland, claimed by the Lessor of the Plaintiff under the said Administrator: And Judgment was affirmed *per Curiam*.

Bill of Exceptions on the Probate of a Will.

Where Bills, Answers, Depositions, &c. in Chancery, shall be good in Evidence in this Action, or not.

In *Ejectment*, the Defendant that made Title as a Purchaser under a Devisee, and shewed only a Bill in Chancery preferred by the Heir, under whom the Lessor of the Plaintiff claims against the Devisee, whereby the Will was set forth, and confessed in the Answer. But *per Curiam* it is no Evidence, tho' a Possession were proved accordingly in the Devisee, and that this had been confessed by the Plaintiff in a former Trial. 2 Keb. 35. *Evans and Herbert.* And yet in 1 Ventr. p. 66. A Bill

## The Law of Ejectments.

Bill in *Chancery* was said to be given in Evidence against the Complainant.

On a Trial in *Ejectment*, it was shewed for Evidence, That the Defendant *P.* was guilty of Simony for giving 100*l.* per *Annum* to *M.* the Patron; and to prove this, they shewed a Bond conditioned to pay 100*l.* per *Annum* generally: And they say, That an Action of Debt was brought against *P.* and *P.* had preferred his Bill in *Chancery* to be relieved against this Bond, and by it disclosed that it was entred into for the Cause aforesaid. But to that it was answered, That *P.* was presented by *G.* but it appeared that *G.* acted as a Servant to *M.* the Patron; and it was opposed, That this Bill is no Evidence, because it only contains Matter suggested, perhaps by the Council or Sollicitor, without the Privity of the Party. But *per Curiam*, the Copy of the Bill shall be read as Evidence, for it shall not be intended it was preferred without the Privity of the Party, and it being disclosed by the Party himself; otherwise they would not allow a Bill in Evidence, if there be not Answer and other Proceedings upon it. *Sider.* p. 220. Dr. *Crawley's* Case.

But at a Trial, the Plaintiff, to prove his Bond, offered a Bill by the Defendant in *Chancery*, which *Keeling* Chief Justice held good Evidence, as in the Parson of *Amersham's* Case Dr. *Crawley*, where a Bill by *P.* a Simoniac to be relieved against his Bond, was admitted against himself; this being the Drift of the Bill, and not any particular Allegation; But the Court would not allow it.

Where a Copy of a Bill shall be read as Evidence.

When

*Where an Answer in Chancery shall be good Evidence at a Trial, or not.*

In a Trial at Bar between *Mills* and *Bernardiston*, an Answer of *L. M.* surviving Trustee, under whom the Plaintiff claimed, was offered for Evidence; but being after a Conveyance by him, the Court refused; but had it been before, it would be good against all claiming under him. But *Twisden* denied it, because an Answer does not discover the whole Truth, and therefore shall be only admitted against the Party himself that made it, and not of one Defendant against another, much less against a Stranger. 2 Car. 2. B. R.

Answer good Evidence against the Defendant himself, but not against other Parties.

And by *Ley, Chamberlain* and *Dodderidge*, a Defendant's Answer in an English Court, is a good Evidence to be given to a Jury against the Defendant himself, but it is no good Evidence against other Parties, Godb. Case, 418. 2 Rolls Rep. 311. *Berisford and Phillips*. And if the Defendant's Answer be read to the Jury, it is not binding to the Jury, and it may be read to them by the Assent of the Parties. Godb. 326.

An Infant answered a Bill in Chancery by his Guardian; and it was a Question in *Leigh and Ward's Case*, in a Trial at Bar in *Ejectment*, where the Infant was Party, whether that Answer could be read in Evidence against the Infant? This Question was sent from the Infant. King's Bench by Justice *Eyres* to the Common Pleas to know their Opinion; and per totam Curiam it could not be read; for there is no Reason that what the Guardian swears in his Answer,

Answer, should affect the Infant. 2 Vent. 1 William and Mary.

Where, and in what Cases Depositions shall be read at a Trial, and where not.

Depositions no Evidence, if the Party be alive.

Depositions no Evidence, without an Answer put in.

Depositions before Commissioners of Bankrupts, no Evidence at a Trial.

Exemplification of Depositions.

Regularly the Depositions in Chancery or Exchequer, of a Witness, shall not be given in Evidence, if he be alive: But if Affidavit be made that he is dead, they shall in a Cause between the same Parties, Plaintiffs and Defendants. Godb. p. 193. Sir Francis Fortescue.

Depositions taken in Chancery in perpetuum re memoriam, upon a Bill for that purpose exhibited, cannot be given in Evidence in a Trial at Law, unless there be an Answer put in and produced. Hardr. 336. Raymund Watt's Case.

Depositions taken before Commissioners of Bankrupts, shall not be used as Evidence at a Trial, altho' the Witnesses be dead; but Depositions taken before the Coroner, with Proof that the Party made them, if dead, shall be good Evidence. P. 18 Car. 2. Bick and Browning.

Exemplification of Depositions under the Great Seal, 988. whereby a Conveyance made in 986. was lost and proved: Per Cur' being so old, and the Records of the Rolls burnt since, it is good Evidence, tho' the Bill and Answer were not in it. 2 Keb. 31.

In Ejectment for Lands in Kent, it was held upon Evidence by the Court, and by Advice of other Judges, whom one of the Barons was sent to consult, That if one Witness be examined for the Defendant *de bene esse* to pre-

preserve his Testimony upon a Bill preferred, and before Answer, and upon an Order of Court for his Examination made upon hearing of Council on both Sides; and if after Answer the Witness die before he be examined again, he being sick all the while, yet the Examination of such a Witness shall not be read in Evidence, because it was taken before Issue joined.

Examination  
taken before  
Issue joined,  
no Evidence.  
*Hardr. 315.*  
*Brown's Case.*

Divers Depositions in Chancery taken *de bene esse*, without Answer of the Defendant, were produced in Evidence; but the Court refused to permit the Reading of such Depositions for Default of the Answer; and it was agreed, That the Court is not bound to such Evidence; but the Course in such Case is by Order of Chancery to require the adverse Party to admit such Evidence; but this doth not bind the Courts of the Common Law, *Sir Thomas Jones p. 164. Porscy'e's Case.*

Two were made Parties to a Bill, one had Title, but the other does not claim Title, but in his Answer sets forth many Things which made for the Title of the other Defendant: And between other Parties in *B. R.* these Depositions were prayed to be admitted in Evidence to prove the same Title; but it was not suffered, because whatever the Defendant saith, he saith it in Defence of himself, and partially. And *Chamberlain Justice* said, The Answer of a Defendant is not good Evidence for any Purpose but against himself. *2 Rolls Rep. 311. Berisford and Phillips.*

A voluntary Affidavit made before a Master of the Chancery, cannot be given in Evidence at a Trial. *Stiles* 446.

**Decree or Decretal Order.** Decree or Decretal Order under the Exchequer-Seal, which recites the Proceedings; and if it have Bill and Answer, allowed to be read. *I Keb. 21. Trowel and Castle.*

#### P E D I G R E E.

In *Ejectione Firme* for the Barony of Cokermouth and the Lands, &c. the Lessor shewed an Inquisition *in tempore R. 2.* and finds an Intail to *Henry Earl Piercy*, and derives his Title under his Third Son, and offers in Evidence *Dugdale's Baronage*, but it was not allowed.

In *Ejectment*, the Earl of Thanet makes his Title by a Gift in Tail by King Edward II. to *Robert de Clifford*, and the Heirs of his Body; and to prove him to be Heir of the Body of the said *Robert*, he produceth a Chart of his Pedigree; which (deriving him from the said *Robert*) shews him to be his Heir. And Sir *William Dugdale* and other Heralds being sworn, they affirm that the Chart was deduced out of the Records and Ancient Books in the Heralds Office; but the Court would not allow this for Evidence, without shewing the Books and Records out of which they were deduced. And after an Ancient Book was shewed by them, which was allowed for Evidence; Sir *Thomas Jones* 224. Earl of Thanet's Case.

Office found, is no concluding Evidence. Sir  224.

A con-

A convicted Person pardoned, is good Evidence.

Convicted Person par-doned.  
Deposition.

Depositions taken in *Chancery* of Persons who are dead, may, by Order of the Court of *Chancery*, be receiv'd as Evidence to a Jury upon a Trial at the Bar by the Plaintiff or Defendant, or both; and if the Depositions were taken in the Cause which is to be tried at the Bar and between the same Persons that are Plaintiff and Defendant in the Trial: But the Copy of the Bill and Answer must be first proved. *Showre* 363.

The Defendant in Ejectment on Trial of a Bar gave Evidence by an *Inspeimus* of a Lease by the Abbot of *Bermondsey*, which the Court disallowed, being a private Deed, and may be forged; and *Inspeimus* lies only of Matter of Record, whereupon Allowance of the said Deed was shewed in the Court of Augmentation, which *per Cur'* is good against the King.

*Inspeimus.*

2 Keb. 294. *Kerby and Prodger.*

If one produce a Lease made upon an Outlawry, in Evidence to a Jury to prove a Title, he must also produce the Outlawry it self; but if it be to prove other Matter, he need not shew the Outlawry, but may have the Lease duly read in Evidence. So it is of an Extent, without shewing the Statute or Judgment on which the Extent is grounded.

P. 1655. B. *supra*, in a Trial at Bar between *Johnson* and *Spencer*. Private *Mss.* Report.

It was agreed in Ejectment in *Vaughan* and Sir *Henry Andrew's* Case, Car. 2. B. R. *per Cur'*, That a Deed of Bargain and Sale given in Evidence is good between the Parties, al- tho' no Consideration were paid, but against

## The Law of Ejectments.

a Creditor or Purchasor, not only a good Consideration must be shewed in the Deed, but Payment also.

A former Mortgage.

What is to be proved in Evidence for a Rectory.

Probate of a Will.

In Ejectment, the Defendant shall not give in Evidence a former Mortgage or Conveyance made by himself; therefore in such Case it's left for him that hath the former Mortgage to get himself made Defendant before the Cause comes to Trial.

In *Ejectione Firme* for a Rectory, the Lessor of the Plaintiff was required to prove in Evidence after he had proved Admission, Institution and Induction, his reading of the Articles, and subscribing them and his Declaration in the Church, of his free and full Assent and Consent to all Things contained in the Book of Common-Prayer, and this ought to be proved to be done within the Time limited by the Statute; and *per Cur'*, in *Ejectione Firme*, Admission, Institution and Induction (with the Matters aforesaid) is good Title without shewing any Right in him that presents him. 1 Sid. 220. Snow and Phillips.

The Probate of a Will was adjudged to be good Evidence, to prove that the Testator made an Executor.

The Court will not permit the Jury upon Trial at Bar to carry any Writings with them out of the Court as Evidence for them to consider of, but such as are under Seal, and have been proved in Court.

The Copy of the Probate of a Will shall be allowed Evidence for Goods only, but not for Lands; for as to Lands, it is but a Copy of a Copy, which cannot be given in Evidence. 1 Levinz 25. the Evidence which

dead Person gave in a former Trial was offered, but denied, because they had not a Copy of the Record of the Trial where the Evidence was given.

Upon a Trial at Bar in Ejectment, a Mortgage Deed enrolled Seven Years after the Date, (the Original being lost) was allowed Deed lost. for Evidence upon slight Proof, That there was such a Deed. 4 *W. & M. B. R.*

A Counterpart of a Deed was allowed to Counterpart. be given in Evidence, 3 *Annae B. R.*

Fraud or no Fraud within the Stat. 31 *E.l.* Fraud given c. 5. may be given in Evidence on the general Issue, *Anderson's Case.* Where a Deed enrolled doth not pass the Estate, yet it shall be rolled. Evidence to some Purposes. *Vid. 3 Levinz 387.*

A Recital of a Deed is no Evidence without procuring of the Deed it self, or an Intentment of it. 2 *Levinz 189.*

Where there are several Witnesses to a Deed, and they are all dead but one, who cannot be found, you shall not be admitted to prove the dead Men's Hands until you have taken out a *Subpæna* against the living Man, and made strict Enquiry after him, and have *Affidavit* of this Matter, and also that he cannot be found; but if you can prove them all dead, then you need only to prove their Hands; therefore covet not to have too many Witnesses to a Deed.

Where the Probate of a Will is produced in Evidence, the Defendant cannot say it was a forged Will, or that the Testator was *Non Compos Mentis*; but Evidence may be given

O that

that the Seal was forged, or that there were not *Bona Notabilia*. *1 Lezinz* 236.

**Counterpart  
of an ancient  
Lease with-  
out Witnesses.**

A Counterpart of an ancient Lease without Witnesses produced by a Grandson, and found amongst other Writings of his Grandfathers, were allowed to be good Evidence. *1 Lezinz* 25.

**Depositions  
of a Sister to  
whom the  
Estate de-  
scended after.**

**Patron.**

**Elegit given  
in Evidence.**

**Bail.**

**Witness ex-  
amined in the  
Country by  
reason of  
Sickness.**

A Sister is examined a Witness in Chancery for her Brother, concerning his Inheritance; the Brother dies, and the Estate descends to her with other Sisters as Co-heirs to the Brother, afterwards there comes to be a Trial in B. C. for this Estate; in which Cause the Sister, who was the examined Witness in Chancery, was one of the Plaintiffs, and the Question was, Whether her Deposition should be read for the Plaintiff? And upon Mr. Justice Tracy's going to the Queen's-Bench, and conferring with the Justices there, and making his Report upon his Return to the Common-Pleas, it was adjudged that her Depositions should not be read. *Hill. 2 Anne B.C.* A Patron in Ejectment is never allowed to be a Witness to maintain the Title of his Clerk. *4 Mod. 17.*

When he that sued an *Elegit* brings Ejectment to try the Title; on Not guilty pleaded, he must in Evidence shew the *Elegit* filed. One who is Bail to an Action, cannot be a Witness for the Defendant.

A Witness who by reason of Sickness, extreme old Age, or other Cause, cannot come to a Trial, may by Order of Court be examined in the County before any Judge of the Court where the Cause depends, in the Presence

Presence of the Attorneys of each Side, and the Testimony so taken shall be allowed to be given in Evidence at the Trial.

If a Witness be served with the Process of Refuse to any of the Courts of Record, to give his Testimony concerning any Matter depending in such Court, and having tendered to him, according to his Calling, such reasonable Sum of Money for his Costs and Charges, as having Regard to the Distance of the Places is necessary to be allowed, doth not according to the Tenor of the Process, having no lawful and reasonable Impediments, appear in Court to give his Evidence. If it be in a Civil Cause, the Party may have his Action on the Statute 5 El. c. 9. Sect. 12. to recover 10*l.* together with further Recompence to the Party grieved, as by the Discretion of the Judge of the Court out of which the Process issued, shall be awarded according to the Loss and Hindrance sustained by the Party who procured such Process. But if it be in a Criminal Cause, the Court, if they think fit, may grant an Attachment.

Inhabitants  
of a Corpora-  
tion.

Inhabitants, if in a Corporation, if they are not free of the Corporation, may be admitted as Witnesses for the Corporation at a Trial which concerns the Corporation, for their Interest is no Ways concerned, and Favour is not a good Exception against a Witness, altho' it be against a Juror, because the Testimony of a Witness is left to the Jury to credit or not to credit, as they shall find Cause, and so it is not binding to the Jury: But the Jury's Verdict, be it true or false, is binding to the Party.

Examination  
of Witnesses,  
*in perpetuum rei Memoriam*.

The Examination of Witnesses which were taken *in perpetuum rei Memoriam*, ought not to be made use of at a Trial, unless the Witnesses so examined be dead; for they were only examined for their Testimonies to be preserved, and to be made Use of only in case they should die before the Trial.

One concern-  
ed not in the  
Title, tho' no  
Party to the  
Suit.

One that is any Ways concerned in the same Title of the Land in Question, may not be allowed as a Witness in the Cause, al- tho' he be no Ways than a Party to the Suit, for his Testimony tends to the Corroboration of his own Title, and therefore shall not be presumed to be indifferent.

Hear-say.

If one who gave Evidence in a former Trial be dead, then upon Proof of his Death, any Person who heard him give Evidence and observed it, shall be admitted to give the same Evidence as the deceased Party gave, provided it be between the same Parties.

#### *Of former Verdict in Evidence.*

In Trial at Bar in Ejectment, M. P. Ann 1673, made a Settlement by Lease and Release to her self for Life, then to the Trustees to support contingent Remainders, then to her First, Second and Third Sons in Tail Males, with Remainders over.

It was objected she had Power to make no such Settlement, because in the Year 1676, her Husband had settled the said Lands on her for Life, and upon the Issue of his Body, and for Want of such Issue, upon George Philpot in Tail Male, with Remainders over, the Remainder to Mary Philpot in Fee, provided that upon Tender of a Guinea to George Philpot

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by the said *Mary*, the Limitations as to him should be void. *George Philpot* makes a Lease to try the Title, the Trustees brought an Ejectment; but because the Tender of the Guinea could not be proved, there was a Verdict for the Defendant.

And now *George Philpot* would have given that Verdict in Evidence at this Trial, but was not suffered by the Court: For,

If one Man hath a Title to several Lands, and if he should bring Ejectments against several Defendants, and recover against one, he shall not give that Verdict in Evidence against the rest, because the Party against whom that Verdict was had may be relieved against it if it were not good; but the rest cannot, tho' they claim under the same Title, and all make the same Defence.

So if two Tenants will defend a Title in Ejectment, and a Verdict should be had against one of them, it shall not be read against the other, unless by Rule of Court.

But if an Ancestor hath a Verdict, the Heir may give it in Evidence, because he is privy to it; for he who produceth a Verdict must be either Party or Privy to it, and it shall never be received against different Persons, if it doth not appear that they are united in Interest; therefore a Verdict against *A.* shall never be read against *B.* for it may happen that one did not make a good Defence, which the other may do.

But the Tender of the Guinea was now proved. 3 Mod. 141. *Lock and Norborn.*

*Ford versus Lord Grey. Mich. 2 Anne.*

On a Trial at Bar in Ejectment, the Statute of Limitations being pleaded, these several Points were ruled upon Evidence.

1. That the Possession of one Jointenant is the Possession of the other, so as to prevent the Statute.

How an Entry and Claim necessary, 1. To prove the Claim to be up to be proved. on the Land claimed (without special Cause.)

2. That it be *Animo Clamandi*.

3. A Man makes an Answer in Chancery prejudicial to his Title, and after conveys away his Estate; this Answer cannot be read against the Alienee by any claiming under the Alienor.

4. That the Recital of a Lease in a Deed of Release is a good Evidence of a Lease against the Releasor, and those that claim under him.

5. A Fine was produced, but no Deed declaring the Uses, but a Deed was offered in Evidence, which did recite a Deed of the Limitation of the Uses; and the Question was, Whether this was Evidence? And per *Cur'*, the bare Recital of a Deed is not Evidence, but if it could be proved that such a Lease had been and lost, it would do if it were recited in another; and it not being proved that ever there was a Deed leading the Uses of the Fine, the Council on the one Side opposed the Deed of Recitals being at all read; but the Court said, we cannot hinder the

Reading

Recital of  
Deeds in  
Evidence.

Reading of a Deed under Seal, but what Use is to be made of it, is another Thing.

6. A Deed bore Date 22 Car. 2. Anno Dom. Anno Dom. 11671. and notwithstanding that Mistake, the mistaken. Year of the Lord being certain, all is well.

7. If there be two Jointenants in Fee, and one of them levies a Fine of the Whole, this Fine by one amounts to no Ouster of his Companion, Jointenant. but it's a Severance of the Jointure, though he be in of the old Use again.

8. A Deed of Title to the Lessor of the Plaintiff of a Vill, supposed (except Black-Acre) the Statute of Limitation being pleaded, and an Entry and Claim being offered in Evidence to avoid it, they were put to prove the Entry to have been in another Place than was excepted.

Entry upon Exception, how to be proved.

*What Matter may or must be pleaded, and what Matter may or must be given in Evidence.*

It is a Rule in Law, in all such Actions Regu'a. wherein one cannot plead, there the Matter to be pleaded shall be given in Evidence, and found per Verdict; but where the Party may plead the same, is to be pleaded by him. Therefore in *Ejectione Firme*, Trespass, &c. in Action on the Stat. 5 R. 2. cap. 7. and other personal Actions, a collateral War-  
ranty cannot be pleaded in Bar; but he shall have the Benefit of it, by giving the same in Evidence to a Jury, and the same is to be found by Verdict of the Jury; so is *Seymor's Case*, 10 Rep. 97. That collateral Warranty

O 4 may

may be given in Evidence on Not guilty pleaded in *Ejectione Firme*, because in that and other personal Actions, that may not be pleaded in Bar. 1 Bulstr. 166, 167. Haywood and Smith. 10 Rep. 97. Seymour's Case, 1 Rep. Chudley's Case.

Condition to  
defeat a Free-  
hold found by  
Jury.

The Jury may find a Condition to Defeat a Freehold of Land, altho' it be not pleaded; but of Things in Grant, they must also find the Deed of the Condition, 21 Aff. 14.

Estoppel  
found by  
Jury.

The Jury may find Estoppel, which cannot be pleaded, and Estoppels which bind the Interest of the Land, as the taking a Lease of a Man's own Land, by Deed indented, and the like, being specially found by the Jury, the Court ought to judge according to the Special Matter. 2 Rep. 4. Goddard's Case.

*Note.* A. brought *Ejectione Firme* against B. who pleads Not guilty, and in Evidence it appears that C. a Stranger had the best Title; now the Court ought to direct the Jury to find for the Defendant, because in this Action the Plaintiff ought to make a good Title for his Lessor, and so in opening of the Evidence for the Plaintiff, the Council for the Plaintiff usually saith so to the Jury. *Alias in Trespass.* Com. 431. 545. b. 546. a.

*What Evidence the Jury shall have with them  
after Evidence given.*

The Jury may not carry any other Evidence with them, but what is delivered to them by the Court, and shewn in Evidence, Upon Evidence to a Jury, to prove *J. S.* to be Heir to *W. S.* The Court will not accept the Pedigree drawn by an Herald at Arms for Evidence, nor will suffer the Jury to have it with them; it's but only Information for Direction, *P. 8 Jac. B. Plumton and Robinson.*

If an Exemplification comes out of *Chancery*, of Witnesses there examined upon Oath who are dead, the Jury shall have it with them; not so if some are living and some are dead, *P. 10 Jac. B. Tomlinson and Croke.*

If after Evidence given to the Jury at the Bar, and they depart, the Sollicitor of the Plaintiff come to them and delivers to them a Church-Book, to take an Age which was given to them, in Evidence before at the Bar, and there shewed to them, and after they found for the Plaintiff; yet this shall not avoid the Verdict, because it was no other than what was given to them in Evidence before, *Vicars and Farthing's Case.*

*What shall be good Evidence to make Title in several special Cases.*

A Verdict for the Lessee is good Evidence for a Reversion in Ejectment, *Hardr. 472.*

In

As to a Rectory, the taking of Tythes only no good Evidence of Ejection.

What Things a Parson in the Ejection of a Rectory must prove.

Institution without Presentation proved no Evidence.

Evidence as to an Appropriation.

In Ejection of a Rectory, the Evidence was of the taking of Tythes only, and not Entry into the Glebe, and the Plaintiff was nonsuit; so it was in *Perry and Wheeler's Case*. 1 Keb. 368. for a Rectory consists of Glebe and Tythes. *Latch* 62. *Hems and Stroud*.

A Parson in the Ejection of a Rectory, (if he will make out his Title) must prove Admission, Institution and Induction; his reading and subscribing the Articles, &c. and his Declaration in the Church of his full and free Assent and Consent to all the Things contained in the Common-Prayer; and this must be proved to be done within the Time limited by the Statute, but he need not to shew a Right in him that presented him. 2 Keb. 48. *Siderf.* 221. Dr. Crawley's Case.

In Evidence, an Institution without Presentation, or Copy of it, was refused in Court; albeit a Presentation may be made by Parol, but Proof must be made of it. *Ibid.*

Admission, Institution and Induction upon the Presentation of a Stranger, is a good Matter to bar him, who had Right in an *Ejectione Firme*, and to put him to his *Quare Impedit*. *Sid. 221. Dr. Crawley's Case.*

In *Ejection*, the Defendant had a Lease of a Prebend made *in tempore Hen. 8.* and expired; and he now claimed a Lease from a nominal Prebendary thereof, founded in the Cathedral Church of *Lincoln*. The Plaintiff claimed under Letters Patents from King

King James I. and the Possession was according to this Grant; and it was a Question, If they ought to shew how it came to the Crown: But the Possession having gone with it, the Court did presume the Grant to King James to be lost, and Judgment *pro Quer.* as in the Case of an Improvisation: Hales being Council, it was insisted, the Improvisation was Presentative till Ed. 4th's Time, and could not be appropriated without the King's Licence, *quod Curia concessit*, and he could not produce the Licence; yet because it was enjoyed ever since Edward the 4th's Time as Appropriate, the Court did intend a Licence, and that the Patent was lost before the Inrolment, and a Verdict accordingly, *P. 27 Car. 2. Coterel's Case.*

In Ejectment for a several Fishing: On Not guilty, if the Plaintiff derive a Title as high as the Abbies, he need not shew any Patent, or Derivation from the Crown; but the constant Enjoyment is sufficient, unless one be sued by the Crown. *14 Car. 2. B. R. Sir Chr. Guise and Adams.*

Where constant Enjoyment good Evidence.

In Evidence to a Jury at Bar, the Defendant made Title by the Feoffment of the Lord M. to his Son in Law the Earl of C. on which there was no Livery nor Inrolment, but both lived together; but the Father was reputed Owner, and paid the Rates, and a Year after released and confirmed to his Son and his Heirs; and this Title was opposed, because there was never any Inception of an Estate at Will, no Entry being proved by the Sons after the Deeds made. But *per Cur'*, the

What Entry  
shall be in-  
tended, and  
need not be  
proved.

Extent of a  
Rectory on  
*Elegit.*

Defendant  
not to give  
in Evidence  
a former  
Mortgage  
made by him-  
self.

Long Posses-  
sion.

the Feoffment with future Conveyances is sufficient, both living together, the Entry shall be intended, and need not be specially proved; whereupon the Plaintiff was nonsuited. *M. 20 Car. 2. B. R. Dunaston and Sir Jerom Whitchoat.*

In *Berry and Wheeler's Case in Ejectment*, the Council excepted to an Extent, under which the Plaintiff claimed, because after Execution of *Fieri facias* for Part, *Elegit* was for the Whole, without mentioning any Thing levied by the former *Elegit* which recited the *Fieri facias*, but was returned *Nihil sed non allocatur*. 2. It was further objected, That it appears, that more than a Moiety is extended: For it's said, That the Defendant was seized of a Rectory, of the Value of 100*l.* and other Lands appurtenant, *quidem Rectoria sine terris Glebalibus* is the Moiety. But *per Cur'*, it may be understood of the Church-yard, &c. distinct from other Lands pertaining, and as long as the Extent continues, it cannot thus be denied but there is Glebe. *M. 14 Car. 2. B. R. Berry and Wheeler.*

In Ejectment, the Defendant shall not give in Evidence a former Mortgage or Conveyance made by himself, and therefore in such Cases, it's left for him that hath the former Mortgage, to get himself made Defendant before the Cause comes to Trial.

If an ancient Deed of Feoffment be shewed, but not Livery upon it, if Possession have gone along with the Deed, this is good Evidence

Evidence to a Jury to find Livery. 2 Rolls  
Rep. 132.

He which affirms the Matter in Issue, ought first to make Proof to the Jury ; and when the Priories were suppressed, a Commission issued, and a Certificate upon this, upon all their Possessions, and their Values which belonged to the Priories ; and therefore it is Whether Part good Evidence in Issue, whether Land was cel of a Priory, Proof by Parcel of the Priory or not, that no mention Certificate of it is in the Certificate. *Lit. Rep. 36.*

upon the  
Commission.

*Variance of the Evidence from the Declaration,  
or what Evidence shall be said to maintain  
the Issue.*

In *Ejectione Firme*, if the Plaintiff declares Lease by upon a Lease made by two, and gives in two, and Evidence, that one of the Lessors was Lessee one was Les- for Life, the Remainder to the other ; this for for Life, is a material Variance from the Declaration, Remainder to in as much as this is only the Lease of the the other. Tenant for Life. 2 Rolls Abr. 719. *England and Long.*

So if a Man declare a Lease by two, Lease by where one had nothing in the Land, and so two, where void as to him ; yet this is a material Vari- one had ne- ance, *id. ibid.* So if a Man declare of a Lease thing in the made by Baron and Feme, and gives in Evi- Land. dence a Lease made by the Husband only, this is a material Variance.

So it is, if a Man declare of a joint By joint Lease made by two, and it appeareth upon the Evidence, That the two Lessors were Tenants they are To- nant in Com- mon.

**Copartners.****The Acres  
and Lease of  
a Moiety.****Verdict to be  
taken accord-  
ing to the  
Title.****Variance as  
to Time.**

Tenants in Common, and so several Leases; this is a material Variance. But otherwise it is, if it appear upon the Evidence, that the two Lessors were Copartners, for this is one Lease being made by them. Cr. *Jac.* 166. *Mantler's Case.*

If the Declaration be of a Lease of Three Acres, a Lease of a Moiety in Evidence will not maintain the Declaration, for it is not the same Lease; but in *Seabright's Case*, *B. R.* 40 *El.* and *Cooper and Franckling's Case*, 14 *Jac.* *Ejectione Firme* of 20 Acres, the Jury found him guilty of the Moiety, and Not guilty of the Residue, the Plaintiff shall have Judgment against, *Plowden* 224. *Brake and Right's Case.*

The Declaration in *Ejectment* was of a Fourth Part, of a Fifth Part, in Five Parts to be divided; and the Title of the Plaintiff upon the Evidence was but of a Third Part, of a Fourth Part, of a Fifth Part in Five Parts to be divided, which is but a Third Part of that which is demanded in the Declaration: And it was said, the Plaintiff cannot have a Verdict, because the Verdict in such a Case ought to agree with the Declaration; but *per Cur'*, the Verdict may be taken according to the Title, and so it was. *Qu.* how the *Habere fac' Possession'* in such Case shall be executed. *Sid.* p. 229. *Ablett and Skinner.*

The Plaintiff declares of a Lease made the 14th of *January*, 30 *El. Hab.* from the *Feast of Christmas* then last past, for Three Years, and upon the Evidence the Plaintiff shewed a Lease bearing Date the 13th of *January* *esdem*

*et aliam ann.* And it was found by Witnesses, that the Lease was sealed and delivered upon the Land the 13th Day. *Per Cur'*, Notwithstanding this Variance, the Evidence is good enough to maintain this Declaration, for if a Lease was sealed and delivered the 13th Day, it was then a Lease of the 14th. *4 Leon. p. 14.*  
*Force and Foster.*

The Plaintiff declared in Ejectment of Evidence of 100 Acres of Land, and shewed his Lease in Evidence of 40 Acres. And it was urged, That he failed of his Lease, for there was no such Lease, as that whereof he did count. But *per Cur'*, it is good for so much as was contained in his Lease, and for the Residue the Jury may find the Defendant Not guilty. *Cr. Eliz. p. 13. Guy and Rand,* and yet it is held, *2 Rolls Abr. 72. Brown and Ells.*

If the Plaintiff declare in Ejectment upon a Lease for Years of Three Acres, and in Evidence he shews but a Lease of a Moiety, this is a material Variance, for it is not the same Lease. *Ejectione Firme* of so many Acres of Meadow, and so many Acres of Pasture. Upon Not guilty, the Jury find a Demise *de Herbagio* and *Pannagio* of so many Acres; the Question was in *Wheeler and Toulson's Case. Hard. 330.* If this Evidence shall maintain the Issue, the Court inclined it did not. Ejectment doth lie of a Lease of Herbage, and then by the same Reason the Plaintiff ought to declare accordingly, and Herbage doth not include all the Profit of the Soil, but part of it.

Ejectment of Meadow and Pasture, and the Evidence is *de Herbagio* and *Pannagio.*

Joint-Lease  
by Tenants in  
Common.

The Declaration was of a Joint-Lease made by Two, and on Evidence it appears they were Tenants in Common. By Three Justices against One, it is good. *Cro. Jac. 166. Mantle's Case, 83.*

Ejectment was of Lands in Oxenbope, and the Witnesses upon Examination did swear there were Two Oxenbopes, Upper and Nether, without Addition; and upon this the Plaintiff nonsuited at York Assizes.

If a Man declare of a Lease made by Baron and Feme, and gives in Evidence a Lease made by the Baron only; this is a material Variance.

*Note,* The Day of the Filing of the Declaration in the Ejectment may be given in Evidence, where the Demise is laid the same Term. *Vide Syderfin, p. 432. Per Dyer's Case.*

#### Of Demurrer to the Evidence.

Demurrer on  
Evidence.

It was held by all the Court upon Evidence to a Jury, That if the Plaintiff in *Ejection Firme*, or other Action, gives in Evidence any Matter in Writing or Record, or a Sentence in the Spiritual Court, (as it was in this Case) and the Defendant offers to demur thereupon, the Plaintiff ought to join in Demurrer, or waive the Evidence, because the Defendant shall not be compelled to put a Matter of Difficulty to the Laygents, and because there cannot be any Variance of a Matter in Writing; but if either Party offer to demur upon any Evidence given by Witness, the other, unless he pleafeth, shall not be compelled to join

join, because the Credit of the Testimony is to be examined by a Jury, and the Evidence is uncertain, and may be enforced more or less. But both Parties may agree to join in Demurrer upon such Evidence, and if the Plaintiff produce Testimonies to prove any Matter in Fact, upon which a Question ariseth, if the Defendant admit their Testimonies to be true, he may demur: But in *In the King's Case of the King*, the other Party may *Cafe*. not demur upon Evidence shewn in Writing or Record for the King, unless the King's Council will thereunto assent. But the Court in such Case shall charge the Jury to find such special Matter; but this is by Prerogative, who may waive the Demurrer, or take Issue at his Pleasure. *Cro. Eliz. 751. Midlet and Baker, 5 Rep. 104. Baker's Cafe.*

And in *1 Inst. p. 72.* If the Plaintiff in Evidence shew any Matter of Record, or Deeds, or Writings, or Sentence in the Ecclesiastical Court, or any other Matter of Evidence by Testimonies of Witnesses, or otherwise, whereupon Doubt in Law ariseth, and the Defendant offer to demur in Law thereupon, the Plaintiff cannot refuse to join in Demurrer, no more than in Demurrer on a Count, Replication, &c. and so, è *Converso*, may the Plaintiff demur in Law on the Evidence of the Defendant: But the King's Council shall not be inforced to join in Demurrer. A Demurrer to Evidence never denies the Truth of the Fact, but confesseth the Fact, and denies the Law to be with the Party that shews the Fact. *Plowd. Newis and Scholastica's Cafe.*

## The Law of Ejectments.

If a Demurrer be upon the Evidence, the Evidence ought to have enter'd *verbatim*, *Keb. 77.*

### *Demurrer to Evidence.*

Demurrer to  
Evidence,  
what.

Matter of  
Fact to be  
agreed.

A Demurrer to an Evidence is, when the Party that doth demur upon it doth demand the Judgment of the Court, whether the Matter given in Evidence be sufficient (admitting it to be all true) to find a Verdict for the Plaintiff upon the Issue that is joined between him and the Defendant. *Pascb. 21 Car. 1. B.R.* And when such Demurrer is taken, the Plaintiff and Defendant must agree the Matter in Fact in Dispute between them, otherwise the Court cannot proceed to determine the Matter in Law, but there must be a *Venire de novo* to try it. And the Judges of the Court cannot try a Matter of Fact in Question upon a Demurrer to an Evidence, and therefore the Plaintiff and Defendant must agree upon it, and confess it, for else the Court will not proceed to deliver their Opinions touching the Matter in Law demurred upon. And upon the Demurrer the Jury are to be discharged, and not to pass upon the Trial, but the Matter of Law (in Question) upon the Demurrer is referred to the Judges.

Matter in Law is not to be given in Evidence, and the adverse Party may demur to such Evidence. *3 H. 6. 36.*

In a Demurrer upon Evidence, the Party demurred unto may demand Judgment of the Court, whether he ought to join in the Demurrer or not; for if there be not a colourable Matter for to ground the Demurrer upon, the Court will not force the Party to join in it, but will over-rule it. *23 Car. 1.*

There must be colourable Matter for the Demurrer, or else the Court will not force to join.

*B. R.*

The usual Course is, when there is Demurrer upon the Evidence, to discharge the Jury; and if Judgment be given for the Plaintiff, to have a Writ of Enquiry of Damages; tho' formerly when the Jury by the Demurrer were discharged of the Issue, yet would assess Damages conditionally if the Judgment should be for the Plaintiff. *Cro. Car. 143. Darrose and Newbott.* And so it's said *per Reg'*, upon Demurrer to an Evidence, the Court did direct the Jury who should have tried the Issue, if the Demurrer had not been to find Damages for the Plaintiff, if upon arguing the Demurrer the Court should give Judgment for him, *Pascb. 23 Car. 1.* For the Jury may consider of the Matter of Fact which should have been tried, if the Evidence had not been demurred unto.

Upon Evidence in Ejectment it was resolved *per Cur'*, That if the Plaintiff in Evidence shew any Matter in Writing or of Record, or any Sentence in the Ecclesiastical Court, upon which a Question in Law ariseth, and the Defendant offer to demur in Law upon it, the Plaintiff may not refuse to join in Demurrer, but he ought to join in Demurrer, or waive his Evidence. So if the Plaintiff produce Witnesses to prove any Matter in

The usual Course when there is a Demurrer to the Evidence.

The Jury to assess Damages conditionally.

So of a Matter of Fact on which Law ariseth.

Fact, upon which a Question in Law ariseth, if the Defendant admits their Testimony to be true, there also the Defendant may demur in Law upon it; but then he ought to admit the Evidence given by the Plaintiff to be true, and the Reason is, because Matter of Law shall not be put into the Mouth of the Lay-gents. So may the Plaintiff demur upon the Evidence of the Defendant, *mutatis mutandis*.

5 Rep.

King's Council shall not be compelled to join in Demurrer.

But if the Evidence be given for the King in Information, or any other Suit, and the Defendant offers to demur upon it, the King's Council shall not be compelled to join in Demurrer; but in such Case the Court may direct the Jury to find the special Matter, and upon this they shall adjudge the Law. But this is by the King's Prerogative, who also may waive Demurrer, and take Issue at his Pleasure. 5 Rep. 104. *Baker's Case*.

Demurrer upon Evidence cannot be for a Thing which the Jury may know of their own Coniscance. 1 *Levin*. 87.

If there be a Demurrer to an Evidence, the Fact is to be returned upon the Record, and appear to the Court, so that they may determine whether the Evidence appearing before them is sufficient to maintain the Action, which if it doth, they thereupon give Judgment for the Plaintiff, if not, then for the Defendant.

*Vide Allen Rep. 18. Wright and Paul Pindar.*

As for Precedents of Demurring to the Evidence. *Vide the last Part of Trials per Paus.*

## *Exemplification of a Verdict.*

A Verdict against one, whom either the Plaintiff or Defendant claims, may be given in Evidence against the Party so claimed. *Contra*, if neither claim under it. *Mich. 1656.*  
*B. R. Duke and Ventres.*

If a Verdict pass for Two Defendants, although by Default of one's not putting in Bail they may not have Judgment, yet they may exemplify their Verdict, to give this in Evidence to another Jury. *2 Rolls Rep. 46. Dennis and Bremblecot.*

In Ejectment brought by a Reversioner, or Debt upon the Statute of Tythes, *Edw. 6.* brought by a Proprietor of Tythes, after a Verdict at Law; the Lessee or the present Proprietor, the Reversioner of the Lands or Tythes, shall have Advantage of the Verdict, and give it in Evidence: And the Reasons are, because they cannot be immediate Parties to the Action or Suit, for that must be prosecuted by the Lessee or present Tenant, and they may give in Evidence, as well as the Plaintiff himself. *Hard. 2 Rep. 472.*

## C H A P. XII.

*Rules for Learning of special Verdicts. Of Estoppels found by the Jury, and how they shall bind. What is a material Variance between the Declaration and Verdict. Of Priority of Possession. Where the special Conclusion of the Verdict shall aid the Imperfections of it. Where, and in what Cases, the Verdicts make the Declaration good. Verdict special taken according to Intent. Difference where the Verdict concludes specially on one Point, and where it concludes in general, or between the special Conclusion of the Jury, and their Reference to the Court. Circumstances on a special Verdict, need not be precisely found. Where the Judges are not bound by the Conclusion of the Jury. Of Certainty and Uncertainty in a special Verdict. Of the finding Quo ad residuum, Certainty or Uncertainty in Reference to Acres, Parishes, Vills, Place. Of Verdict being taken by Parcels. How the Ejectment of a Manor to be brought. Of a Verdict, on other Lease or Date than is declared upon, which shall to be good or not. Of the Juries finding Parcel. Where Verdict shall be good for Part, and void for the Residue. The Time of the Entry of the Plaintiff's Lessor, where material. Where the Jury ought to find an actual Ouster on him that had*

had the Right. Prout lex postulat, how to be understood. Where, and in what Cases, special Verdict may be amended.

## A General Verdict.

If at a Trial at Bar there be Matter in Law, and the Judges agree to it, and so the Jury do not find it specially, but give a general Verdict, the Judgment shall be according to the Verdict, and cannot be stay'd.  
*1 Bulstr. 118. Platt and Sleep.*

Ejectment of Seven Messuages *five Tenementis*, is ill after a general Verdict; and it's ill on Demurrer; but this might have been helped by taking Verdict of either. So it is where Ejectment is *de Messuagio & Tenemento*, it's ill after a general Verdict, *2 Keb. 80, 82. Burbury and Yeoman.* In this Case the Verdict was general for the Plaintiff for the Messuages, and *Non Culp'* for the Tenements, it seems it had been good. But *Hales* Chief Baron refused to allow of such finding in the Home Circuit. And it was said by the Court, as this Case is, the Plaintiff may not aid himself *per releasing of Part*, as perhaps he might, had there been Lands also in the Declaration. *295 Mespme Case.*

But first, I shall set down Two or Three Councils to Things observable as Rules or Directions of the Court, in reference to special Verdicts.

subscribe the Points in Question.

It was made a Rule of Court, That in Special Verdicts where the Points are single, and not complicated, and no

Of finding  
Deeds in *hæc  
verba*.

A tachment  
against the  
Defendant,  
because he  
would not  
bring in his  
Evidences.

special Conclusions; the Council, if required, shall subscribe the Points in Question, and agree to amend the Omissions or Mistakes in the mean Conveyances according to the Truth, to bring the Points in Question to Judgment. It was likewise order'd in *Roll's Time*, That the unnecessary finding of Deeds in *hæc verba* upon special Verdicts, where the Question rests not upon them, but are only derivative of Title, shall be spared and found briefly according to the Substance they bear in reference to the Deed, be it Feoffment, Lease, Grant, &c.

*Note*, In 2 *Rolls Rep.* 331. An Attachment was awarded against the Defendants, because they would not bring in their Evidence for to have a special Verdict in *Ejectione Firme*; and this by the Course of the Court, because there is no other Remedy.

### Entry, Demise, and Ejectment, found by special Verdict.

*Et qd' idem T. K. intravit in tenementa infra scripta, & fuit inde seit' prout Lex postulat' qd' idem T. K. sic inde seit' existen' postea scilicet vice-simo die praed' mensis Octob' Anno decimo sexto supradict' dimisit praefat' G. C. tenementa illa cum pertin' in narratione praed' mentionat' habend' & tenend' tenementa illa cum pertin' ead' G. C. a festo Sancti Mich. Archang' tunc ult' preterit usq; finem & terminum quinq; Annorum extunc prox' sequens & plenarie comprehend' & finiens, ac qd' virtute ejusdem dimissione idem G. in tenementa illa cum pertin' intravit & fuit inde possessus qd' ipse praefat' G. sic inde possessionat' existens,*

existen' prædict' F. G. postea scilicet eod' 20 die Octob' Anno decimo sexto supradict' in ead' tene-  
menta cum pertin' in & sup' possessionem inde in-  
gravit & ipsum a firma sua prædict' ejicit. Sed  
utrum, &c.

*As to the Rules of special Verdict.*

Estoppels, which bind the Interest of the Estoppels  
Interest of the Lands, as the taking of a found by the  
Man's own Land by Deed indented, and the Jury.

like being specially found by the Jury, the  
Court ought to judge according to the spe-  
cial Matter ; for the Estoppels regularly must  
be pleaded, and relied upon by apt Conclusion,  
and the Jury is sworn *ad veritatem dicen-  
dam*; yet when they find *veritatem factus*,  
they pursue well their Oath, and the Court  
ought to judge according to Law. So may  
the Jury find a Warranty, being given in  
Evidence, tho' it be not pleaded, 10 Rep. 97.  
*Vide supra tit. Evidence.* And if the Jury  
find the Truth, the Court shall adjudge it to  
be a void Lease. *Vide Cro. Eliz. 140. Sutton*  
*and Rawlins's Case.*

In Ejectment, if it appear by the Record Priority of  
of a special Verdict, that the Plaintiff had Possession  
Priority of Possession, and no Title be pro. where a  
ved for the Defendant, the Plaintiff shall good Title.  
have Judgment, as in *Coryton's Case*. *J. Hib-*  
*lin* was seised in Fee of the Lands in Question,  
and by his Last Will deviseth unto *A. H.* Lessor  
of the Plaintiff, if my Son *T. H.* happen to  
have no Issue Male after the Death of my  
Wife; and if he have Issue Male, then 5*l.*  
to be paid to *A. H.* The Devisor died seised,  
leaving

leaving Issue, *Thomas*, who had R. Issue Male. *Anne* the Wife of the Devisor survives him, and after dies; and they find that *A.* and *Eliz.* were Sisters and Coheirs of the said R. the Issue Male, who died without Issue. And they found the Entry of the Lessor of the Plaintiff, and the Lease to the Plaintiff *prout* in the Declaration; and that the Defendant as Guardian to *A.* and *Eliz.* ousted him. The Points in Law in this Case were not argued, because it appears by the Record, that the Lessor had Priority of Possession, and there is not any Title found for the Defendant: For though it be found that *A.* and *E.* were Coheirs to the Issue Male, that is to no Purpose, because it was not found that they were Heirs of the Devisor; and the Estate Tail (admitting it were so) appears to be spent by the Death of *Thomas Hiblin* without Heir Male, and so they had no Title; and then the Priority of Possession only gives a good Title to the Lessor of the Plaintiff against the Defendant and all the World besides, but only against the Heir of the Devisor. 2 *Sanders* 112. *Allen and Rivington.*

In *Bateman and Allen's Case* there was special Verdict in *Ejectment*, sed utrum the Entry of the Defendant upon the Matter be lawful or not, they pray Advice. And if the Entry were lawful, the find for the Defendant, if not, &c. Now forasmuch as in all the Verdict it is not found that the Defendant had the primer Possession, nor that he enter'd in the Right, or by the Command of any who had Title; but it is found he enter'd upon the Possession of the Plaintiff without

out any Title, his Entry is not lawful, and the Plaintiff had good Cause of Action against him, wherefore the Plaintiff shall recover, and so held all the Court; wherefore they would not hear any Argument as to Matter of Law. But if the Conclusion of the Verdict had been *si, &c.* whether the Entry of *Hill* and his Wife were lawful or not, then the Judgment should have been upon Matter in Law; for that it should be intended that the Defendant had Title, if the Lessor of the Plaintiff had no Title, and that the Plaintiff had not Cause of Action, but now not. *Craw and Ramsey.* *Vide infra,* Cro. El. 437. *Bateman and Allen.* *Plo. Nervus & Scholastica.*

Special Verdict finds *W. B.* seised, and devised the Reversion of all Messuages (except in *D.*) to the Heirs of the Devisor, and that *Tho. B.* was Brother and Heir, and enter'd and leased to the Plaintiff till the Defendant ejected him, and have found no Title for the Defendant: Now being there is no Title found for the Defendant, nor of what Land this Ejectment was, (*viz.*) That it was not of that devised before the Verdict, is imperfect, and otherwise the Plaintiff must have had Judgment upon the *prior Possession.*

In *Craw and Ramsey's Case*, 2 *Vent.* 3. the Jury find that *Patrick*, who was the Issue born in *England*, enter'd and was seised, but that he, *Anno Dom. 1651.* did bargain and sell, *virtute cuius* the Bargainees were seised *prope Lex postulat*, and then bargained and sold it in 1662. *Wild and Archer* were of Opinion, That the Plaintiff could not have Judgment upon

**Intendment.**

**Prout Lex po-  
stulat.**

If the Defendant hath pri-  
mer Possession  
first, he shall  
not have  
Judgment if  
no other Ti-  
tle be found  
for him.

upon that Verdict, for that they and their Bargainees seised *prout Lex postulat*; but they find the Defendant enter'd, and so the *primer Possession* is in him, which is a good Title against the Plaintiff, for whom none is found, it being not found that *Patrick* enter'd. But *Tirrel* and *Vaughan* said, It shall be intended that *Patrick* enter'd; for a Verdict that leaves all the Matter at large to the Judgment of the Court, will be taken sometimes by Intendment, as well as where the Jury conclude upon a special Point, Cro. *Jac.* 64. The Jury find an Incumbent resigned, it shall be intended the Resignation was accepted. So *Hob.* 262. And where they find the Bargainees seised *prout Lex po-  
stulat*, that doth not leave it doubtful, whether seised or not seised, but whether by Right or by Wrong, for Seisin must be taken as found expressly, neither do they find any other in Possession; yet however, if the Defendant had *primer Possession*, he shall not have Judgment, if no other Title be found for him, as in *Cro. Car.* 57. *Hern* and *Allen*. The Husband makes a Feoffment in Fee with Warranty, and takes back an Estate to him and his Wife for their Lives, &c. The Husband dies, the Wife enters; the Question was, If the Entry of the Wife shall remit to the Estate-Tail? But the Jury find the Husband was seised *prout Lex postular*, but no Entry by him; and no Remitter can be wrought without an Entry. 2 *Bulst.* 31, 32.

*Ejectione Firme* of the Rectory of *M.* of the Leafe of *Henry Fowler*, and that the Lessor was presented by the Lord *Windsor* upon De-

Deprivation of *A. L.* Upon Evidence it appeared, That the Advowson was the Inheritance of the Lord *Windsor*, who granted the next Avoidance thereof to Dr. *G.* The Church became void. *Fowler*, Father of *Henry*, by Simony procures *Henry* to be presented, who was instituted and inducted; and so the King presented *A. L.* who was afterwards deprived. But Ten Days before, *Richard Fowler* procures a Grant of the next Avoidance to *J. S.* and procures *J. S.* to present *Henry Fowler*. *Per Cur'*, his Presentation is merely void, he being disabled ever after to take the same Place; and every one who is in Possession hath good Title against him and his Lessee, so as the Plaintiff cannot maintain this Action. *Cro. Jac. 533. Bootb* and *Rich. Potter.*

If the Plaintiff hath not Title according to his Declaration, he cannot recover, whether the Defendant hath Title or not, and whether he be a Disseisor or not; as where an Infant makes a Lease at Will, who enters and ousts the Plaintiff, and the Plaintiff brings Ejectment. *Vide 1 Leon. 211. Cotton's Case.*

*Ejectione Firme* was brought upon a Lease made by *Roan* of the Rectory of, &c. Special Verdict found: *Glover* put in a Caveat to the Bishop in the Life of the Incumbent; the Incumbent dies, and afterwards by the Presentation of *Mantle*, *Morgan* was instituted. And after *Wingfeild* presents *Glover*, who was instituted and inducted; and after the King presents his Clerk *Roan*, who was inducted; and after *Morgan* was inducted;

and

## The Law of Ejectments.

and after *Roan* enters, and lets to the Plaintiff, who upon the Entry of the Defendant brought his Action. Now *Morgan* was instituted, and after *Glover* was inducted, which was void; but by that he had the Possession, and afterwards *Roan* the Presentee of the King is inducted; and after *Morgan* is inducted; and after *Roan* enters, and *Glover* enters upon him: The Question was, Who had better Possession, *Roan* or *Glover*? *Per tot' Cur'*, *Roan* had the better Possession, if it be admitted that the King had not any Title to present; for though *Glover* had the first Possession, yet his Possession was defeated by the Induction of *Morgan*, who had the true Right; and then when *Roan* enters upon him, he had the first Possession, and better Right against any other *præter Morgan*, and by Consequence the Action will lie by the Lessee of *Roan* against *Glover*. *Moor* 191. *Hickborn* and *Glover*.

Declar' on  
Five Years,  
Jury found  
but Three  
Years.

Ejectment, and declares upon a Lease for Five Years; and upon Not guilty, the Jury finds that the Lessor of the Plaintiff had only a Term for Three Years, & si, &c. *Hale* and *Wild* held this Verdict to be against the Plaintiff, for the Judgment shall be, That the Plaintiff shall recover *Terminum suam prædictum*, which is Five Years, and the Lessor's Interest doth not continue so long: And perhaps the Defendant may be him in Reversion after the Three Years ended, and then by this Means the Lessor of the Plaintiff shall recover the Land for Two Years more than he had Right to hold it. 2 *Levin*. *Roe versus Williamson*.

On special Verdict it was found that it was Copyhold, Parcel of the Manor of S. demisable for Three Lives, and that by the Custom of the Manor the first Name in the Copy should enjoy it during his Life, & sic *successive*; and that the Lord A. granted it by Copy to Alice W. R. W. and J. W. her Sons for Three Lives; that R. W. made Waste in cutting down Timber-Trees. Lord A. seized it, and granted it by Copy to the Lessor of the Plaintiff for his Life, and after licensed him to let Tenements *infra script'* *in quibus, &c.* for Five Years, if J. the Lessor of the Plaintiff so long lived; that he let to the Plaintiff for Three Years, who enter'd, and the Defendant ousted him. *Et se super totam, &c. per Cur'*, inasmuch as it is a good Lease made to the Plaintiff, and no Title at all appears for the Defendant, but that he enter'd upon the Plaintiff's Possession, and not by Command of any who had Right, although there were some Matter between the Plaintiff and the first Copyholder, yet Judgment ought to be *pro Quer'*. Cro. Jac. 436. Worledge and Benbury.

So in Powel and Goodard's Case, *Trin. 21 Car. 2. B. R.* in *Ejectment*, special Verdict finds W. G. seised in Fee, and devised that P. and J. G. should be Trustees, and take the Profits till the full Age of H. G. whom he makes his Heir. W. G. doth authorize his Feoffees to sell so much of his Lands for Payment of Debts and Funeral Charges as in their Discretions shall seem meet. The Feoffees for 80 l. Lease for 99 Years to begin after the Death of R. G. and his Wife, to

Three,

## The Law of Ejectments.

Priority a sufficient Title.

Where primer Possession makes a Disseisin.

In Ejectment, prior Possession a good Title against the King's Presentation, not so in a *Quare Impedit*.

Three, One whereof is Lessor of the Plaintiff: It was found at the Time of the Sale, that all the Debts were paid. *Per Cur'*, the Fee being given away from the Heir of the Devisor, Priority of Title is a sufficient Possession, unless some Title be found for the Defendant; and primer Possession is good where neither Party hath Title. And in this Case the Lease was adjudged void, the Trustees not being enabled to sell farther than to satisfy Debts.

In *Wallis's Case*, *Stiles Rep.* 291. special Verdict was on a Copyhold Custom, the primer Possession will make a Disseisin, if the Custom be not well found. It was not found in that Case that the Land was demisable according to the Will of the Lord, and so it may be Free Land, and the Custom did not extend to it; nor is it found that the Parties to whom the Letter of Attorney — was made to surrender, were customary Tenants, and then the primer Possession by the Defendant will make a Disseisin; and Judgment *pro Quer'*.

In *Ejectment*, prior Possession is a good Title against the King's Presentation, but not so in a *Quare Impedit*; for there the Incumbent ought (although Defendant) to make a Title against the King's Presentation without Title, as is the Book 7 H. 4. 31. but if the Incumbent be in by Entry of his own Head, without Presentation, it is not sufficient in either. 1 *Keb.* 503. *Brown and Spencer.*

3. The

3. The special Verdict is good, *Si constare poterit*, that it is the same Place and the same Land in the Declaration mentioned, although it be not found expressly; and although the Jury find not that it is the same Land in the Declaration mentioned, yet if they find the Entry and Ejectment according to the Declaration, it is sufficient; and therefore the Mistake of a Letter, or Addition of a Word, shall not hurt the Verdict, *Si constare poterit, &c.* *Siderf. p. 27. Hoare and Dix.*

4. In many Cases the special Conclusion of a special Verdict shall aid the Imperfections of it. If the Jury find a special Verdict, and refer the Law upon that special Matter to the Court, although they do not find any Title for the Defendant, which is a collateral Thing to the Point which they refer to the Court, yet the Verdict is good enough; for all other Things shall be intended, except this which is referred to the Court. As in Ejectment, if the Plaintiff declare upon a Lease made by *A.* and the Jury find a special Verdict and Matter in Law upon a Power of Revocation of Uses by an Indenture and Limitation of new Uses, and then a Lease for Years made to the Plaintiff by the Lessor in the Declaration, and another in which there is a perfect Variance. But they conclude the Verdict, and refer to the Court, whether a Grant of a new Estate found in the Verdict be a Revocation of the first Indenture or not? The special Conclusion shall aid the Verdict, so that the Court cannot take Notice of the Variance

The special Conclusion of a special Verdict shall aid the Imperfections of it.

Intent.

Where the Verdict is good, and the Conclusion ill. between the Lease in the Declaration and the Verdict, because the Doubt touching the Revocation is only referred to the Court. And although they refer to the Court, whether this be a Revocation of the first Indenture, and not of the former Uses, or Limitation of new Uses, at it ought to be; yet in a Verdict this is good, for their Intention appears. But where the Jury find specially, and furthermore conclude against Law, the Verdict is good, and the Conclusion is ill, and the Court will give Judgment upon the special Matter, without having Regard to the Conclusion of the Jury, 5 Rep. 97. Litt. Rep. 135. 2 Keb. 362, 412. 11 Rep. 10.

Diversity between a general Conclusion and a special Conclusion. Moor 105, 269. So note this Diversity between a special Conclusion of the Jury and Reference to the Court, and a general Conclusion and Reference to the Court. A precise Verdict may make the Declaration good, which otherwise would be ill, as the Declaration is of Lands in *Sutton Coefield*; and the Verdict finds the Lands in *Sutton Colefield*, and the Deed is of Lands in *parva Sutton infra Dominium de Sutton Colefeld*; so neither the Verdict nor Deed agree with the Declaration for the Vill where the Lands lie, therefore no Judgment ought to be given.

A special Verdict may make the Declaration good. But per Cur', the Verdict finding Seisin *de infra script' Messuag'*, that is, quasi an express Averment; and finding that *Sutton Coefield* and *Sutton Colefield* & *parva Sutton infra Dominium Sutton Colefeld*, are all one, and that they be all in one Parish, and this being in a Verdict when the Jury found *Quod dedit tenementa infra script' by Name in the Deed,*

Deed, shall be intended all one. So it's aided by the finding of the Jury, who find expressly that the Bishop dedit *Tenementa infra script'*. Cro. Jac. 175. *Ward and Walkow*, Yelv. p. 101.  
*Mesme Case.*

5. The Judges are not bound by the Con. Lease. clusion of the Jury, as in Ejectment on a Void the Jury find Lease, that if the Entry of the Daughter was not congeable, the Defendant is guilty. Now the Judges are not bound by the Conclusion of the Jury, but may judge according to Law, as 10 Ed. 4. f. 70. Trespass was brought against the Lord for distraining; the Jury found for the Plaintiff: But because the Statute of Marlbridge is, non ideo puniatur Dominus, &c. the Court shall adjudge for the Defendant. So is the Rule in *Plowd. Com.* 114. b. when the Verdict finds the Fact, but concludes upon it contrary to Law, the Court shall reject the Conclusion, as in *Amy Townsend's Case*. The Jury find precisely that the Wife was remitted, which was contrary to Law; for their Office is to judge of Matters of Fact, and not what the Law is. So if the Jury collect the Contents of a Deed, and also find the Deed in *hic verba*, the Court is not to judge upon their Collection, but upon the Deed it self. *Moor*, p. 105. *Lane and Cooper*.

And yet the Court is sometimes bound by the Conclusion of the Jury; as in *Ejectione Firme* of one Acre, the Jury find the Defendant guilty of one Moiety, and a special Verdict for the Residue, and conclude if the Court shall find him guilty of all, then, &c. The Plaintiff cannot have Judgment upon this

for a Moiety, if the Court shall not adjudge him guilty of the whole for the special Conclusion cited. *1 Rolls Rep. 429.*

**Verdict to be taken accord-**  
**ing to Intent.**

6. Special Verdict shall be taken according to Intent, and the Court must make no more Doubts than the Jury does, the finding Matter of Fact being only the Jurors Office, as *5 Rep. Goodale's Case.* The Doubt was, whether the Payment of 100*l.* with Agreement to have some Part of it back again, were sufficient upon a Condition to defeat the Estate of a Stranger? The Court regarded not that there was no Title found for the Party that made the Entry, whereupon the Action was brought. *Ejectione Firmae* was brought by G. against W. Upon Not guilty, the Jury concluded their Doubt upon Performance of a Condition by Payment of Money by Sir J. P. to one W. but yet, in making up their Verdict, they had given the Possession to the Plaintiff by Lease, and laid the Entry upon him by W. without any Title under Sir J. P. but that was included, and so not regarded. *Hen. 55. 262.*

**When the Verdict con-**  
**cludes special-**  
**ly on one Point, the Court shall doubt of no more than the Jury doubt;**  
*Secus where it concludes in the General.*

**General Con-**  
**clusion de-**  
**pends upon all the Points of the Ver-**  
**dikt.**

7. But if the Jury conclude upon the General, whether the Defendant's Entry were lawful or not; which is all one, as if they had referr'd to the Court whether he be guilty or not. This depends upon all the Points of the Verdict indifferently, that may prove him Guilty or Not guilty, *Hub. 262.* So is *Castle and Hobb's Case, Cro. Jac. 22.* The Verdict was on the passing by Letters Patents, and the Jury found, that if they were good Letters Patents, then for the

the Defendant, otherwise they found for the Plaintiff, and they find no Title for the Plaintiff. But it is intended, there is a sufficient Title found for the Plaintiff, unless by this Patent it be defeated and avoided; so that if the Jury be satisfied that the Plaintiff hath any good Right by any other manner of Title, the Court ought not to doubt thereof.

*How and in what Cases special Verdicts shall be taken by Intent or Presumption, and what Things shall be supplied.*

I devise all those my Lands in Shelford, called Somerby, to W. in Tail, Remainder over: And it is not found *per Verdict* that those Lands in the Action are called Somersby. But *per Cur'*, For as much as the contrary is not found, it shall be intended that he had not other Lands in Shalford than those which were called Somersby, though that Name be not at first given them; for it was, [I devise all my Lands in Shalford to his Wife for Life, and the Remainder in Tail,] *prout ante.* Cro. Eliz. 828. *Peck and Channel.*

It shall be intended, that the Reversion continues in the Party; as if a special Verdict find that A. was possess'd for Years of Land, and that the Reversion in Fee was in B. and that A. devise the Term to C. after Reversion the Death of M. whom he makes his Execu- shall be in- tor, and dies, and M. enters, and during his tended to con- Life, C. after releaseth his Possibility to B. tinue. and it is not found that the Reversion continued in B. at the Time of the Release; yet

## The Law of Ejectments.

it shall be intended to continue in him in a Verdict, it being found to be once in him by the same Verdict before. *P. 13 Car. I. B. R. Johnson and Trumper.*

Where a Life  
shall be in-  
tended to be  
in Being.

Jury find *Vir-*  
*tute Literar'*  
do not find  
they were un-  
der Seal.

What shall be  
presumed un-  
less the con-  
trary be shew-  
ed.

A Life shall be intended to be in Being though not found, as was *Fretzvil and Molineux's Case*. If the Jury find the Title of the Plaintiff to be under one, who was Lessee for Life, and they find the Estate for Life, but do not find the Tenant for Life is alive, the Life shall be intended and supplied, the Conclusion and Reference to the Court being upon other Matter. Special Verdict in Ejectment found, that *J. J.* was deprived by the High Commissioners of a Benefice, and it is found in this Manner: That such Persons *authorizati virtute Literar' Patenti' Eliz. Reg'*, and it is not found that the Letters Patents were under the Great Seal; yet this is good, and shall be intended in a Verdict. *Tr. 13 Car. I. B. R. Allen and Nash.*

In Ejectment, the Verdict was on a *Proviso* of Revocation of Uses, That it should be lawful for the Covenantor, being in perfect Health and Memory, under his Hand and Seal, and by him delivered in the Presence of Three credible Witnesses, &c. It was agreed, That though the Verdict do not find the Covenantor was in perfect Health and Memory, yet that was well enough, for it shall be presumed except the contrary were shewed, and so for the Presence of credible and sufficient Persons; otherwise if it were in the Presence of sufficient Subsidy-Men. *Hob. 312. Kibbet and Lee.*

If the Jury find that *J.* was seised in Fee, and devised the Land to *J. D.* although they do not find the Land was held in Socage, yet that is good; for this shall be intended, it being a collateral Thing, and it being the most common Tenure.

If the Jury find that *J. S.* was seized in Devise. Fee, and made his Will *in hac verba*, and that he afterwards died; although they do not find he died seised, yet it shall be intended he died seised, and so good. But,

If the Jury finds the Words of the Will, and yet do not find the Will, the Verdict is not good.

And if the Jury find a Bargain and Sale, Bargain and a Fine, and do not mention Inrolment Sale. or Proclamations, it shall not be intended.

*Hob. 262.*

In *Ejectione Firme* the Verdict finds that Extent. *E. D.* the Lessor and Conisor, was seised in Tail of the Manor of *B.* at the Time of the Recognizance, and that this Manor was delivered in Extent; but he doth not say that the Lands in the Declaration were Parcel of the said Manor, and so it's not found that this Land was delivered in Extent, and then the Defendant had no Title. *Per Cur'*, It's not material, it shall be intended in a special Verdict, otherwise there is no Cause of a special Verdict. *Cro. Car. 458. Cleve and Vere.*

It was objected in *Corbet and Stones's Case*, P. 1653. B.C. The Jury find that after a Fine levied, and before the Ejectment, the Interest of *M. C. F. B.* and *K. B.* of the Lands in Question, came to the Lessor of the

Q 4 Plain-

That the Interest of the Lands came to the Lessor, but shews not how.

Statute.

In a special Verdict all necessary Circumstances shall be intended.

A Life.

Plaintiff, but shews not how. But *per Cur'*, it is good enough, for when the Jury finds the Interest comes to the Lessor, the Court intends all Circumstances that shall conduce to that Fact; for the Court doubts not when the Jury doubts not. 4 Rep. 65. *Fullwood's Case.*

The Jury find that *J. C.* came before the Recorder of *London* and Mayor of the Staple, and acknowledged himself to *T. R.* in 200*l.* Exception was taken, that there was no finding of any Statute there; for it was found that this was *secundum formam Statuti*, and that it was by Writing. But *per Cur'* it's good enough, for all Circumstances shall be intended. *Ruym. 150.*

And there is another Rule in our Books pursuant to this last, in a special Verdict the Circumstances shall be intended, or in a special Verdict the Circumstances of every Thing need not to be so strictly found as in Pleading. As in Ejectment, the Jury found he delivered the Lease upon the Land, but found not that he had enter'd and claimed, *Cr. Eliz. 167. Willis and Fermin.* And in *Goodall's Case*, 5 Rep. it was resolved, That all Matters in a special Verdict shall be intended and supplied, but only that which the Jury refer to the Consideration of the Court.

Also in *Molineux's Case*, Cro. Jac. 146. it was excepted to a special Verdict, That the Life of *B.* who was Tenant for Life, and the Lessor in the Action, was not found. But *per Cur'*, it shall not be intended that she is dead, unless it be found. And in a special

cial Verdict, all necessary Circumstances shall be intended, unless found to the contrary: But some Things the Court shall not intend, as in *Sadler and Draper's Case*, *Sir Thomas Jones*, p. 17. where the Case was,

Some Things  
shall not be  
intended.

Whether the next of the Blood being of the half Blood, *i. e.* whether the Brother of the half Blood of the Mother of an Infant, shall be Guardian in Socage of Land by Dif-  
cent on the Part of the Father, *Cro. Eliz.* 825. But because the Verdict did not find that the Lessor of the Plaintiff, who claims to be Guardian in Socage, was *proximus in sanguine à quel, &c.* that the Court shall not intend it, and so no Title found *pro Quer.*  
*Ideo nil. cap. per Bill.*

If the Jury find a Special Verdict, (*viz.*) A. devileth his Lands to his Executors *quo-  
unque* they shall levy such Money, or his Heirs shall pay to them the said Sum, and conclude upon the Matter *si, &c.* but they do not find the Heir had not paid the Money. This *quounque* the Heir pay the Money, is Parcel of the Limitation of the Estate which ought to have been found: Otherwise the Court, who is to judge upon the whole Matter, shall not intend it. *Tr. 19 Jac. B. R. Langley and Pain.* But if in a Special Verdict, the Jury find *J. S.* was seised in Fee of Land, and made his Will, and by it devileth all his Estate to *B.* paying Debts and Legacies, and refer to the Court the Matter in Law, (*viz.*) whether a Fee passeth by this, but find not that *B.* had paid the Debt and Legacies; yet this is a good Verdict, because it is a Condition pro-

Difference  
between the  
Condition  
and Limita-  
tion of an  
Estate, as to  
the Finding  
by the Jury.

properly, and not a Limitation. *Tr. 1651. Johnson and Kerman*; yet if the Verdict find that *J. S.* was seised in Fee of Land, and possess'd of certain Leases for Years of other Lands, and by his Will devileth his Leases to *J. D.* and after devileth to his Executors all the Residue of his Estate, Mortgages, &c. his Debts being paid, and his Funeral Expences discharged; this was not a perfect Verdict, the Matter in Law referred to the Court being, whether the Executors had an Estate in Fee by this Devise, in as much as it is not found that the Debts were paid, &c. which is a Condition precedent, so as the Executors cannot have it till the Debts paid, and *venire de novo* granted. *Hill. 10 Car. 1. B. R. Wilkinson's Case, Vide 2 Leon. 152. Allen and Hill's Case*, Condition must be punctually found.

Finding the Substance of the Issue is sufficient.

To this Purpose it is laid down often in our Books as a Rule, That if the Jury find the Substance of the Issue, it is sufficient, as in Ejectment of a Manor: If the Jury find there were no Freeholders, and so it is no Manor in Law; yet it being a Manor in Reputation, and so the Tenants pass by the Leases, therefore this Verdict is found for him who pleads the Lease of the Manor, for the Substance is whether Bargain and Sale *de modo Irrotulat'*, and not said in Six Months, it's good in a Verdict, but not in a Plea. *3 Keb. 180. Vide supra, Corbet and Stones's Case*.

If in Ejectment a Lease is pleaded of a Manor, &c. and the Issue is, *Quod non dimisi Manerium*, and the Jury give a Special Verdict,

dict, That there were not any Freeholders but diverse Copyholders of the Manor, and that it was known by the Name of a Manor, tho' it was not any Manor in Law for Default of Freeholders; and tho' this was alledged in Pleading to be a Manor, which Pleading is made by learned Men, and tho' this was in an Action adversary and not amicable; yet for as much as the Issue is triable by the Lay-gents, and in Truth the Tenements in which, &c. pass by the Lease, the Verdict is found for him that pleads the Lease of the Manor, for the Substance of the Issue is, whether it were demised or not, *Vines* and *Durham's Case* cited. 6 Rep. 77. in *Sir Moyle Fincheb's Case*.

Manor in Re-  
putation, and  
not in strict  
Law.

8. It is a Rule in Law, in such Actions in which one cannot plead, there the Matter to be pleaded shall be found by Verdict, and this well; but where the Party may plead, there the same is to be pleaded by him. *I Bulstr. 166.*

What one  
cannot plead,  
shall be found  
by Verdict.

The Jury may find a Warranty being given in Evidence, for in Ejectment from Trespass, and in Action on the Statute of 5 R. 2. cap. 7. a Warranty is not to be pleaded (or other personal Action): The Nature of a Warranty, and to have Benefit thereby, is to be by Way of *Voucher* and *Rebutter* in a real Action, and must plead or lose the Benefit of it; but in personal Actions, collateral Warranty cannot be pleaded by Way of Bar; yet it may be given in Evidence to a Jury, and the same is to be found by Verdict of the Jury. *Vid. ibid. Heywood and Smith.*

9. If

9. If any Thing be omitted in the Declaration, or if more is put in the Declaration than is found by the Jury, if it makes a material Variance between the Declaration and the Verdict, the Action shall abate; as if a Declaration in Ejectment be of a Lease of three Acres, a Lease of a Moiety will not warrant the Declaration: But if the Variance be by Way of Surplus or Defect, if it be not material in the Extenuation of the Action, or Damages, Action will lie.

**Verdict by Presumption.**

10. The Jury may give a Verdict by Presumption, as to find Livery in respect of long Possession; but if they find the Matter Specially, the Court will not adjudge this a Livery. *1 Rolls Rep. 132.*

11. A Verdict that finds part of the Issue, and nothing for the Residue, is sufficient, *Vide postea.*

12. Fraud ought not to be presumed, unless it be expressly found. *2 Rep. 25. 10 Rep. 56. Cr. Car. 549. Crisp and Pratt.*

*Where and in what Cases Entry must be expressly found or not, and of the Force of the Words, Prout lex postulat.*

In *Horewood and Holman's Case*, *2 Bulst. 29.* Lands are given to the Use of a Man and his Wife, the Remainder to the Heirs of the Body of the Husband; the Husband makes a Feoffment in Fee with Warranty, and takes back an Estate to him and his Wife for their Lives, the Remainder over to make a Reinter-  
ter to the Wife, there ought to be an En-  
try,

try, and no new Entry is found by the Special Verdict to be by the Husband, but only *prout lex postulat*. The Court advised a new Trial, and to amend the Special Verdict, and to find the Entry of the Baron and Feme.

To make a Remitter, there must be a new Entry.  
*Prout lex po-  
stulat.*

The Time of the Entry of the Plaintiff is sometimes material, as in *Fort and Berkley's Case*. *Per Cur'*, In that Case, which Way soever the Law had been taken, Judgment could not have been given for the Defendant. There was a Lease made to *Godolphin* in Reversion, under whom the Plaintiff claims. *Chersey* the Lessor of the Plaintiff did enter upon the Possession of *Berkley* the Defendant, but when he did enter does not appear; then the Case is, *Berkley* was in Possession. If the Lessor of the Plaintiff enter'd before the Term began, he was a Disseisor as it was. *Dyer 89. Clifford's Case*. But it's said he was possess'd *prout lex postulat*, as so he was of the Reversion too, it does not appear but that he was a Disseisor, and so continued. *Carter's Rep. 159, 160.*

The Time of the Entry of the Plaintiff's Lessor.

*Prout lex po-  
stulat.*

If the Title appear to be in a Stranger, they must find an Ouster made to him who had the Right. And therefore in *Ejectione Firme*, If the Jury find a Special Verdict, being Matter in Law upon a Lease for Years, reserving Rent upon Condition, &c. but no Title is found for the Plaintiff nor Defendant; but it is only found, that the Lessor of the Plaintiff being a Stranger enters into the Land and leases this to the Plaintiff, by which the Plaintiff was possess'd *prout lex postulat*, until the Defendant entered and ejected

Where actual  
Ouster must  
be found.

ejected him; this is not a good Verdict, the Title appearing to be in a Stranger, without any actual Ouster made to him who had the Right. *2 Rolls Abr. 699. Bland and Inman.*

In an *Ejectione Firme*, the Jury find a Special Verdict, and find Special Matter in Law, whether *J. S.* had Right to the Land, upon which the Court adjudged, That he has Right to the Land. But they find farther, That *J. D.* entered into the Land up. on *J. S.* and was thereof seized *prout lex posse*, and made the Lease to the Plaintiff, and the Lessee was by Force of this possessed, and it is not found that *J. D.* disseised *J. S.* and for that, upon this Verdict shall not be intended that *J. D.* ousted *J. S.* and disseised him, and then the Entry of *J. D.* and his Lease is void, and so an Action does not lie against a Stranger, who had nothing in the Land, as was *Hitchin and Glover's Case.*

Ouster Dissei-  
sin.

Entry by a  
College, how  
to be found.

In *Ejectione Firme* by the Lessee of a College, if the Jury find a Special Verdict in this Manner, (*viz.*) That the College let this to *A.* upon Condition, and found a Special Matter in Law, whether the Condition be broken, and that the College supposing the Condition broken, by their Bailiff entered, and let this to the Plaintiff, this is not a good Special Verdict, without finding of a Command given by the College to the Bailiff to enter, to be by Deed, for otherwise it is not good. *2 Rolls Abr. p. 700. Dumper and Simms.*

A.

A. was seised, and demised to his Executors the Lands in Question for the Performance of his Will, till the Executors levy 100 Marks, or until his Heirs pay to them 200 Marks, and that the Executors after his Death entred and were possess'd *Prout lex postulat*, and being so possess'd, granted to the Plaintiff, who entred and was possess'd till the Ejectment. This is uncertain, because it is not found that the Heir had paid the Money, for they say *Super totam Materiam*, and to say *Prout lex postulat*, is not an Affirmation of any certain Possession. *Palmer* 192. *Langly and Paine.*

*Prout lex postulat*, how far extend.

## Of the Juries finding by Parcels.

It is a Rule; A Verdict that finds part of the Issue, and nothing for the Residue, is Insufficient. As in *Pemble and Sterne's Case*, Raym. 165. The Demise is laid of a Park Messuage 300 Acres of Land, and the Verdict finds only as to Parcel, and nothing of the Residue for the Plaintiff or the Defendant; the Verdict is void, so is the Rule. *1 Inst. p. 227.* A Verdict that finds part of the Issue, and finding nothing of the Residue, it is Insufficient for the Whole, because they have not tried the whole Issue wherewith they are charged. *Car. Jac. 113.* *Ejectione Firme* of a Lease of Messuages, 3000—Acres of Land, 3000 Acres of Pasture in *D. per nomina* of *Monkbal*, and 5 Closes *per nomina*. On Not guilty the Jury gave a Special Verdict, (*viz.*) *quoad* 4 Closes of Pasture, containing by Estimation

Verdict that finds Part of Issue, and nothing for the Residue, is insufficient.

*Quoad resid.***A Verdict of  
more than de-  
clared for.****Ejectment of  
a Manor, how  
to be brought.**

mation 2000 Acres of Pasture, that the Defendant was not guilty, *Quoad resid.* they find the Matter in Law; this Verdict is imperfect in all, for when the Jury find that the Defendant was not guilty of 4 Closes of Pasture, containing by Estimation 2000 Acres of Pasture, it is not certain, and it doth not appear of how much they acquit him, and then when they find *quoad residuum* for the Special Matter, it is uncertain what that Residue is; a *Venire fac' de novo* was awarded, *Woolmer* and *Caston's Case*. But if the Verdict be of more than declared for, it shall be void for the Residue. As Ejectment for him who pleaded all of 14 Acres, and the Jury find guilty of 20 Acres, 14 Acres the Plaintiff shall have Judgment for, and the Verdict shall be void for the Residue. 2 *Rolls Abr.* 707, 719. *Seabright's Case*.

In Ejectment of a Manor, and so many Acres as includes the Manor; the Jury find for the Plaintiff as to the Manor, *præter* the Services; and as to the Services not guilty. And Judgment *pro Quer.* Here are Two manifest Errors: 1. When the Court is of a Manor, the Jury cannot find for the Plaintiff for that which is not a Manor; and there is none that brings Ejectment of a Manor, but they also add the Acres that contain it, to the end that if they prove it not a Manor, they may recover according to the Acres; but they must enter it so, but not as here generally of both. 2. The Verdict being as much as the Count, the Judgment against the Plaintiff cannot be in

*Mise.*

*Misericordia*, if it be supposed good. The Court held them to be manifest Errors, and assignable by the Defendant. *Hob.* 108. *Latc* 61. *Cr. Jac.* 113. 1 *Keb.* 110. *Hammond* and *Conisby*. But I conceive that is not Law, for in *Hammond* and *Conisby's Case*, *Ejectione Firme* was of a Manor; upon Not guilty, there was a Verdict *pro Quer.* for the Manor, and *quoad* the Services Not guilty. Error was assigned, because the Verdict is not for the Plaintiff, for the Manor, because as to the Services it is for the Defendant. But *Surplus in a per Cur.* The last Part of the Verdict shall be Verdict. taken general for the Plaintiff. *Sid.* 232. *Ejectione Firme* of a Messuage: On Not guilty, the Jury find the Defendant guilty of Two Parts of the House: It was alledged in Arrest of Judgment, That the Verdict has not found the Defendant guilty according to the Count, which is of a Messuage an entire Thing. *Manwood contra: Omne majus continet in se minus*; but if the Declaration had been of Two Parts of a Messuage, and on Not guilty, the Jury had found him guilty of the entire House, the Plaintiff shall not have Judgment. *Savill* 27.

In *Ejectione Firme* of a Messuage, if it be found that a little Part of the House is built by Incroachment upon the Land of the Plaintiff, and not the Residue; yet the Plaintiff shall recover for this Parcel by the Name of an House.

It's laid down positive in *Ablett* and *Skin-* The Verdict  
*ner's Case* in *Sid.* p. 229. that the Verdict may be of  
may be of fewer Parts than in the Declara- fewer Parts than the De-  
tion: clarion.

## The Law of Ejectments.

tion: As on Trial at Bar in *Ejectment*, the Declaration was of a Fourth Part of a Fifth Part in five Parts to be divided, and the Title of the Plaintiff upon the Evidence was but of a Third Part of a Fourth Part of a Fifth Part in five Parts to be divided, which is but a Third Part of what is demanded in the Declaration. It was said, the Plaintiff cannot have a Verdict, because the Verdict in such Case ought to agree with the Declaration; but *per Cur'* the Verdict may be taken according to Title; and so it was. But Qu. how the *Habere fac'* shall be executed.

If the Verdict contain more than the Declaration, the Plaintiff may release his Damages.

As to a Manor.

If the Verdict in Ejectment contain more than the Declaration, the Plaintiff may release the Damages. Q. If he may release Part of the Land. *Sid.* p. 412.

*Ejectione Firme* of the Manor of *Dale*; on *Non Culp'* pleaded, the Jury find, *quoad unum Messuagium parcel' Manerii praedict'*, guilty; *quoad resid'* Not guilty. It is moved he cannot have Judgment; the Action is brought of the Manor, and the Jury find him guilty of one House only, so he cannot have his Judgment according to his Demand. So *Delabar* and *Hudlestone's* Case. *Ejectment* of a Rectory, and upon *Non culp'* pleaded, the Defendant was found guilty of Tythes without the Glebe; and he could not have Judgment, the Glebe being the Principal. So *Ejectione Firme* of a Manor, and proves only the Rents, he shall not have Judgment. *Ejectment* was of an House, the Special Verdict was, That the Plaintiff was seised in Fee; and if there be several Things laid in *Ejectment Firme*,

Firme, as House, Garden, &c. and the Jury find guilty of one only, the Plaintiff shall have Judgment of this. In *Delabar's Case*, it was not found that the Tythes were Parcel of the Rectory, and so it differs from this Case. In *Ejectione Firme* of a Manor and ten Acres, it is no Plea that the ten Acres are Parcel of the Manor; *aliter in Entry in the Nature of an Assize. Adjournatur.*

The Jury find the Defendant guilty of one Moiety, and for the other Moiety a Special Verdict; this is no Error, for the Jury may conclude upon the Moiety, for it may be he entred into one Moiety, and not into the other; but if he declares upon the Whole, they cannot find him guilty of a Moiety.

*3 Bulstr. 229. Milward and Watts.* But if one declares in *Ejectione Firme* upon a Fence made in certain Lands, and he has Title but for a Moiety, the Jury are not to conclude upon the Moiety, for they are not to judge upon this, but the Court.

If several Things are laid in *Ejectione Firme*, and the Jury find the Defendant Guilty in one, the Plaintiff shall have Judgment of that.

Where the Jury may conclude upon a Moiety or not.

*Where a dying seised, or possess'd, must be found.*

A Man by his Last Will and Testament devised all his Fee-simple Lands whatsoever to his Brother, on Condition he suffer his Wife to enjoy all his Free Lands in *H.* during her Life, and the Jury found the Testator had only a Portion of Tythes in *H.* but they did not find the Testator died seised of the Tythes, which without doubt had been ill upon the Demurrer. And *Rolls* said, He

## The Law of Ejectments.

would see the Notes by which the Special Verdict was drawn up, if that could help it: For they all agree the Verdict ought to have found the Dying seised. *Stiles Rep.* 279. *Saunders and Rich.*

In *Ejectione Firme*, if the Jury find a Special Verdict, That *J. S.* was seised of the Manor of *D.* in his Demesne as of Fee, of which Manor a Copyholder in the Place where, &c. does Waste by the Cutting down an Oak; and that after *J. S.* dies, and the Lessor of the Plaintiff, being his Cousin and Heir, enters into the Manor, and into the Place where, &c. for the said Forfeiture, and was of this seised in his Demesne, as of Fee, and concludes, *Si super totam Materiam, &c.* This is not a good Verdict, because it is not found that *J. S.* died seised of the Manor, and that this descended to the Lessor as his Cousin and Heir; for it may be *J. S.* aliened the Land, and that the Father of the Lessor, or the Lessor himself, might repurchase it, and that he was also Cousin and Heir to *J. S.* for although it be in a Verdict, yet it shall not be intended that the Fee continued in *J. S.* at his Death, and that he died seised thereof without finding of it. *P. i Car. 1. Cormwillis and Hammond.*

## *Of Uncertainty in Special Verdicts.*

- { As to Persons.
- { As to Acres and Parcels.
- { As to the Place or Vill.
- { As to Time.

### *As to Persons.*

One devilish all his Lands to *E.* his Wife for Life, the Remainder to *F.* his Daughter in Tail, the Remainder to the eldest Son of *William* his Brother in Tail, Remainder over. *E.* enters, *F.* dies without Issue; they find *Gertrude* Cousin and Heir to *F.* who levied a Fine, but they find not *Gertrude* was Heir to the Devisor; and it may be altho' *F.* was the Daughter, the Devisor might have a Son, or that she was Heir to him by a Second Wife, yet that Exception seemed not valid. Cr. El. 642. *Hemsley and Price.* So in 3 Rep. Sir George Brown's Case, *Anthony* is found Son but not Heir, and yet, without his being Heir, the Plaintiff had no Title: And yet in *Cymbal and Sands's Case*, Cro. Car. 391. *Gimlet and Sands*, the Court seemed to be of Opinion, That tho' the Jury found that *Humfrey* had Issue by *Hebell* his Wife, *John, unicum filium suum*, that not finding that he was Heir (it was in case of his being Heir to a Warranty collateral) was not good; for he might have elder Sons by another *Venter*, or there might be an Attainer, or the Warranty might be discharged

Do not find  
Heir.

or released in his Life-time. 2 Rolls Abr. 701, *mesme Case.*

The Jury found a Special Verdict on a Will, in which they found A. had Issue two Sons B. and C. and do not find which of them was the Elder, and which the Younger, which is material in the Case. This Verdict is not good; for tho' B. is first named, yet it doth not appear by this that he is the eldest Son. *Aic. 20 Jac. B. R. Peryn and Pearse.*

#### *Uncertainty as to Part of an House.*

Part of an  
House.

The Court  
must be in-  
formed of the  
Certainty,  
and it ought  
to appear to  
them.

Guilty of a  
Room is good.  
*drews.*

The Defendant pleads Not guilty; the Jury find him Not guilty for Part, and Guilty *de tanto unius Messuagii in occupatione, &c. quantum stat super Ripam.* Per Cur', the Verdict is Insufficient for the Uncertainty; for tho' the Certainty may appear to the Jury, yet that is not enough; the Court ought to give Judgment. *& oportet quod res dedicatur in iudicium.* Had they found him guilty of a Room, it had been good. So if he had been found guilty of a Third Part, for of them the Law takes Notice. And an *Ejctione Firme* was brought for the Gate-house at *Westminster*, and the Jury found the Defendant guilty for so much as is between such a Room and such a Room, and it was adjudged good. *Marsh Rep. 47. Jaxon and An*

## *As to Certainty of Acres.*

*Ejectione Firme* was brought of 400 Acres *As to Acres.* of Land ; and the Jury find the Defendant, *quoad* all besides three Acres Parcel *tenementorum prædictorum,* Not guilty ; and *quoad* the *Quoad, &c.* three Acres, they find Special Matter ; and that G. A. the Lessor let the aforesaid three Acres to the Plaintiff, and that he was possessed ; and that the Defendant ejected him out of the three Acres, *parcel' tenementorum* *Parcel.* *prædictorum,* and they did not find the *Ejectment* of the aforesaid three Acres, *&c.* and it may be the *Ejectment* was of other three Acres ; and for this Cause *per totam Curiam* held ill. Cr. El. 642. Hemstey and Price.

*Ejectment* of five Acres, if the Jury find the Defendant guilty in 8 Perches *de terre* *percel' tenementorum prædictorum,* it's a void Verdict, because uncertain, and no Execution can be made of Pieces. 2 Rolls Abr. 694. Pawlet and Dr. Redman.

And this is the Difference between Trespass and Ejectment : The Plaintiff declares of Trespass in one Acre in D. and abuts it East, West, North and South. Upon Not guilty the Jury finds the Defendant guilty *in dimidio Acræ infrascript'*, the Plaintiff shall have Judgment ; and so if they had found but one Foot of the Acre. And it sufficeth to be found in one Moiety of the Acre bounded in this Action, where Damages are only to be recovered. But if it were in *Ejectment,*

It must be cer-  
tain in what  
Part the  
Plaintiff must  
have his *Hab.*

*fac. possif.*

*Aliter in Tres-  
pass.*

*Quoad residuum  
must be cer-  
tain.*

*De Messuagiis  
five Tenementis  
is ill, and the  
Verdict helps  
it not.*

As to Acres  
and Parishes.

the Verdict had been ill; for it is not certain in what Part the Plaintiff shall have his *Habere fac' possessionem.* *Yelv.* p. 114. *Winckworth and Man.*

In *Ejectione Firme* the Plaintiff declares of a Messuage, 3000 Acres of Land, 3000 Acres of Pasture in *D. per nomina* of the Manor of *Monkall*, and five Closes *per nomina, &c.* The Jury gave a Special Verdict, *quoad* four Closes of Pasture, containing by Estimation 2000 Acres of Pasture, that the Defendant was not guilty; *quoad residuum* they find the Matter in Law. This Verdict is imperfect in all; for when the Jury found the Defendant was not guilty of four Closes of Pasture, containing by Estimation 2000 Acres of Pasture, it is uncertain, and doth not appear of how much they acquit him; and then when they find *quoad residuum* for the Special Matter, it is uncertain what that Residue is; so there cannot be any Judgment given. And a *Venire fac' de novo* was awarded. *Cro. Jac. 114. Woolmer and Caston.*

In *Ejectione Firme de septem Messuagiis five* *Tenementis, and Verdict pro Quer'*, it's ill for the Uncertainty, and the Verdict doth not help it. And *Hales* refused to let the Jury find for the Plaintiff for the Messuages, and *Non culp'* for the Tenements. But *per Twisden*, had it been *de uno Messuagio five Tenemento vocat' The Black-Swan*, it had been good, because the last Part makes it certain. *Sid. 195. 2 Keb. 80. Cro. El. 186.*

On Special Verdict in *Ejectment* the Case was, the Declaration was of several Messuages in the several Parishes of *St. Michael, St.*

St. James, St. Peter and St. Paul, and that part of the Premisses lie in the Parish of St. Peter and St. Paul, and that there is no Parish called the Parish of St. Peter, nor none called the Parish of St. Paul. *Per Cur'* the Copulative (*Et*) shall be referred to that which is real and hath Existence, *ut res magis valeat*; not to make St. Peter's one Parish and St. Paul another, but to make them both one Parish, and the Words, *several Parishes*, are supplied by the Parishes before-mentioned, as 6 Ed. 3. *Præcipe* of ten Acres in *A. B. and C.* thereto the Lands must lie in every one of the Vills; but if the *Præcipe* were, *de Manerio & de dem. Acri*s in *A. B. and C.* there it would be well enough, tho' the Manor lay elsewhere, provided that ten Acres lay within the Vills aforesaid, for then the last Words are satisfied by the ten Acres. *Hardr. 1. 330. Ingleton and Wakeman.*

Yet in *Thomas and Kenn's Case. P. 38 El. B. R.* it's said in *Dyer ult. Edit. in margine 34. b. Ejctione Firme upon Title of Land of Sir Hugh Portman*, the Count was of an hundred Acres in *D. and S.* and *Non culp' pleaded*, the Jury found the Defendant ejected him of ten Acres only, and shews not them in Certain, and adjudged a good Verdict, and the Plaintiff had Judgment.

It's a Rule laid down. 1 *Rolls 784. Rhethorick and Chappel's Case*, wherever an Acre is but found certain, a Man may release all the rest that is uncertain, and nothing is more usual.

Wherever but one Acre is found cer-tain, one may release all the rest.

Of

*Of Uncertainty in a Special Verdict, in reference  
to the Place or Vill.*

Acres in two  
Vills, and the  
Jury found  
the Defen-  
dant guilty,  
and say not  
how many lie  
in one Vill,  
and how ma-  
ny in another.

*Ejectione Firme* of 30 Acres of Land in D. and S. The Defendant was found guilty of 10 Acres, and *quoad residuum* not guilty. And it was moved in Arrest of Judgment, That it was uncertain in which of the Vills those Lands lay; and therefore no Judgment can be given: *Sed non Allocat.* and adjudged *pro Quer.* For the Sheriff shall take his Information from the Party, for what 10 Acres the Verdict was. So is *Siderf.* 75. If one declares for 100 Acres of Land in two Vills, and the Jury find the Defendant guilty, this is good without saying how many Acres lie in the Vill, and how many in the other: And the Sheriff ought to take Notice of this at his Peril, in making of Execution. And so in *Dence* and *Dence's Case*: It shall be intended, that every Acre of Land named in the Declaration lies in both Vills, for so much is presumed by the Declaration, and the *Venire* from both Vills. *Cro. Car.* 467. *Portman* and *Morgan*. *Sid. p. 75.* *Telv.* 228. *Dences's Case*.

*Trin. 43 El. Meredith and Brown.* It was adjudged in *B. R.* that in *Ejectione Firme*, supposing the Ejectment of 10 Acres, and the Jury find the Circumstances but of four Acres, the Plaintiff shall recover these four Acres. But Dame *Baskerville's Case* was in 39 *Eliz.* *Affize* was brought of a Park containing 60 Acres, and the Jury found the Disseisin

but of 20 Acres, and adjudged against the Plaintiff for all. But note, the Park was entire. *Dyer* 15. b.

## *As to Time.*

It was a great Case between *Vernon* and *Gray*. The Ejectment was supposed the first of *May*; and the Jury found the Ejectment to be *circa* the first of *May*. It was held not good. *Godb.* 125. cited in *Tarran* and *Bradshaw's Case*.

## *Of a Verdict in other Leases, or Date, than is declared upon.*

The Plaintiff declares of a Lease by two Copyhold-Lords, Lessors of the Plaintiff for a Demise generally. A Term certain; and the Jury find a Demise generally, and do not find the Lease whereupon the Plaintiff declares, and it may be any other Lease which might not be determined at the Time of the Verdict, but is now since; and the Ejectment is only found out of this, and not on the Lease declared on. 19 Car. 2. B. C. *Lenthal* and *Thomas*.

In Ejectment, if the Plaintiff declares of a Lease for Years made the first of *May*, to commence at the First of *St. Michael*, then next ensuing (which is now past) if the Jury find that the Lease was made the First of *June*, or at any other Day before the Feast of *St. Michael*: This is found *pro. Quer.* for the Day of the Making is not material, so that

Count of a  
Lease for  
Years in P<sup>r</sup>.  
fession, the  
Jury found  
the Lease  
made on an-  
other Day, it's  
against the  
Plaintiff  
*Aliter*, if it be  
made to com-  
mence at a  
it Day to come.

it was made to commence at a Day to come. By *Foster* it's the common Practice. 1 *Rolls Abr.* 704.

But if in Ejectment the Plaintiff declares of a Lease for Years in Possession such a Day, and the Jury find the Lease to be made at another Day; this shall be found against the Plaintiff, because it is not the same Lease. So it is,

If a Man in *Ejectione Firme* declare of a Lease made the 5th of *May*, 10 *Jac. Habend.* from the Annunciation before for three Years; and the Jury found the Lease to be made the 15th Day of *May*, 10 *Jac. Habend.* from the Annunciation before (being the same *Lady Day*) for three Years: This is found against the Plaintiff, because this was a Lease in Possession at another Day (*scilicet*, the 15th of *May*) than the Plaintiff had counted, altho' it had the same Commencement. But in *Musgrave's Case* it was, the Lease in the Declaration was a Lease made the 5th of *May*, 10 *Jac. Habend.* from the Feast of the Annunciation then last past for 21 Years *extunc scilicet*, from the Feast of the Annunciation next ensuing. But the Lease found by the Jury, was a Lease made the said 5th of *May*, 10 *Jac. per Indent.* bearing Date the said 5th Day of *May*, Anno 10 *Jac. Habend.* from the Feast of the Annunciation *beate Marie Virginis tunc ultimo preterito pro termino 21 annorum prox' sequen' dat' dicte Indenture.* It was adjudged *pro Quer.* and so affirmed in a Writ of Error. But I conceive this Case is best reported by *Allen.*

The

The Plaintiff declared, That *J. S.* the 5th of *May*, 10 *Jac.* demised a House to him, *Habend.* from the Feast of the Annunciation last past, for 21 Years *extunc prox. sequend.* and the Defendant the same 5th Day of *May* ejected him. And upon Not guilty the Jury found, that *J. S.* the said 5th of *May*, by Indenture bearing Date the 4th of *May*, demised the House to the Plaintiff *Habend.* from the Feast of the Annunciation last past, for 21 Years next ensuing the Date hereof, fully to be compleat and ended. And upon the Verdict the Plaintiff had Judgment, which was affirmed in *Scaccario.* The Term began from the Feast of the Annunciation, in Computation of the 21 Years; and on the 5th of *May*, in Point of Interest. *Allen.* p. 77.

In *Pope and Skinner's Case*, the Plaintiff declares of a Lease made to him the 30th Day of *March*, 11 *Jac.* *Habend.* from the Feast of the Annunciation next before for a Year. The Defendant traverseth the Lease *Modo & forma.* The Jury find a Lease to the Plaintiff on the 25th Day of *March* for one Year, from thence next ensuing: This is against the Plaintiff, for being in *Ejectione Firme*, he demands and recovers the Term, and therefore must make his Title. *Aliter in Replevin.* *Hob.* pag. 73. *Pope and Skinner.*

Ejectment of a Lease made the 12th of December, *Habend. à primi die.* On Not guilty, the Jury found a Lease made in *bæc verba*, which was dated the 1st of December, *Hab.* from henceforth, but delivered the 12th

The Plaintiff  
must make his  
Title truly.

## The Law of Ejectments.

*Habend.henceforth.*

*The Averment of the Estate Tail to be found.*

*Where when the Party comes in by Limitation of Use, it must say, Vigore stat.*

*Diversity of Names.*

of December. It was objected, That from the Day of the Date, and from henceforth, are several Commencements, for the one begins the Day it was sealed, the other the Day after. But *per Cur.* They are both one, being a Computation of Time from the Time past; and both shall be pleaded to begin from the Day of the Date, when the Lease is afterwards sealed at another Day; and if the Lease be made the 1st of December, *Habend.henceforth*, the Ejectment may be alledged the same Day. *Aliter.* If it be *à die datum.* *Pro Quer.* *Cro. Jac. 258. Lewellin versus Williams.*

Verdict finds that the Lessor of the Plaintiff was seised in Tail of the Rectory, &c. and does not shew the Beginning of the Estate Tail, which is the particular Estate. *Per Cur.* It is an apparent Fault. *Cr. Eliz. 407. Baker and Searle.*

In the said Case where the Party comes in by a Limitation of an Use, the Verdict saith, *Virtute cuius dimissionis*, and it ought to have been *Et virtute Statut.* *Per Cur.* This is an apparent Fault in Substance and Form.

The Issue in Ejectment was, if Julian the Wife of the Defendant was alive at such a Time; and the Jury found, that Jenimet the Wife of the Defendant was alive at such a Time. *Per Cur.* They shall not be adjudged one and the same Person, without finding also by the Custom of the Country, that Women baptized by the Name of Julian, have been also called Jenimet. *Moor 411. No. 560. Hantbach and Shepard.*

## *Verdict as to Baron and Feme.*

In *Ejectione Firme* against Baron and Feme.

On Not guilty pleaded, and a *Venire fac'* granted, the Jury found the Wife not guilty, and found a Special Verdict as to the Husband, which Special Verdict is afterwards adjudged insufficient by the Court. A *Venire fac' de novo* shall be awarded for both, *Venire de novo*. as well for the Wife as the Husband, and upon this new Writ the Wife may be found guilty, because the Record and Issue is intire; and for this their Verdict is insufficient in all, and void. 2 Rolls Abr. 722. *Langly and Pain*. So in *Swan's Case*, Stiles 412. Ejectment against Baron and Feme, and the Feme is found Ejector by the Verdict, and nothing is found concerning the Husband, and a *Venire fac' de novo* was awarded, unless they will agree to amend the Verdict according to the Notes.

Wife found  
Not guilty,  
and Special  
Verdict as to  
the Husband.

Where, and in what Cases, Special Verdicts may be amended.

Where a Special Verdict is not entred according to the Notes, the Record may be amended, and made agree with the Notes at any Time, tho' it be three or four Terms after it is entred. 4 Rep. 52. 8 Rep. 162. Cr. Car. 145.

And

## The Law of Ejectments.

*Postea* where amended.

Nonsuit for Default of Warrant to try the Cause not recorded.

Record of *Nisi prius*, Variance from the Roll not amendable.

And where a Verdict is certainly given at the Trial, and uncertainly returned by the Clerk of the Assizes, &c. the *Postea* may be amended, upon the Judges certifying the Truth how the Verdict was given. Cr. Car. 338.

The Plaintiff was nonsuited at the Assizes for Default of the Warrant of the Justices to try the Cause, (viz.) for not confessing Lease, Entry and Ouster, and prayed that the Nonsuit might not be Recorded, which the Court granted, and an *Alias Distringas*. <sup>1</sup> Keb. 508. *Pits and Viner.* Cro. Car. 203. *Aquila Wicke's Case.*

If the Plaintiff makes Title upon a Demise made by *Tho. Bill* and *Agnes* his Wife, and the Parties are at Issue, and the Record of *Nisi prius* was entred by the Clerk, that the said *Tho. Bill* and *Anne* his Wife made the Demise, &c. so that the Record of *Nisi prius* differs from the Roll; this shall not be amended, for if the Record should be amended, the Jury should be attaint, in as much as they found a Lease made by *Tho. Bill* and *Agnes* his Wife; and peradventure this Lease will not prove a Lease by *Tho. Bill* and *Anne* his Wife. <sup>1</sup> *Rolls Abr.* 202. *King and King.*

Rone and Bond. M. 19 Car. I.

### Amendment.

*Ejectione Firme of Lands in Com' Devon,* Verdict was given *pro Quer'*, and it was moved in Arrest of Judgment, because the *V.*

ire fac' was *Samuel Ham*, and so the *Distringas*; but in the *nomina Juratorum* it was *Daniel Ham*, and he was sworn by the Name of *Daniel*; and if this were amendable, was the Question. *Roll*; It is, because the *Venire fac'* is well; and therefore, altho' the Process ensuing be ill, it shall be amended, for it is the Default of the Clerk in miswriting it, for the Sheriff writes the *nomina Jurator*' out of the *Distringas*, and it is Error in him to write *Daniel* for *Samuel*. And he cited the Lord *Rutland's* *Cafe*, and *Cedwell's* *Cafe*, where the Difference is taken between the Mistake in the *Venire fac'*, there it shall not be amended; but otherwise it is where it is in the ensuing Process; and of this Opinion was Justice *Jones* at this Time; and the Court agreed to make Examination of the Truth, if the right Man was sworn or not, and theri to dispute if it shall be amended. And at another Day, *Maynard* prayed that it might not be amended, for it is clearly out of the Statute of 21 *Jac.* for that provides if there be Error in the *Venire fac'*, *Hab. Corpora* or *Distringas*, in the Surname or Addition of Names; but here it is in the Christian Name, and this is not amendable by the Statute of 8 *H. 6.* for first the Amendments there are Increasing, Interlining, Addition or Substraction of Record in Letters, Titles, Parcels of Letters: But here is not an Addition, Substraction, &c. but there is no other Record but this Pannel, and the Jury being called by this Pannel, and *Daniel* was called by this Pannel and sworn by it; and so it is here the Act of the Court, not of the Clerk. 27 *H. 6. c. 5.* it was ill at

the Common Law, where a Man is ill named in the *Hab. Corpora*, and well in the *Venire fac'*; and in *Baskerville's Case* this Difference was taken, (*viz.*) where it was in the Surname, and where it was other Christian Name; for a Man at the same Time may have two Surnames, and he which is named by a Surname in the *Distringas* or Pannel, may be the same Person which is named and sworn by the other Name in the Pannel, and for this it shall be tried by Examination, and amended accordingly: But it is not possible that he which had one Christian Name in the Pannel, should be the same Person which had another Christian Name in the *Venire fac'*, and *Mic. 6 Car. in Attaint*, the *nomen Juratorum* was *Alexandrus*, and the *Venire fac' Alexander*; and it was often moved, and the Court would not amend it: And in *5 Rep. 42.* it is said that *Palus* shall not be amended for *Paulus*; principally because it is in the Christian Name. *Berkley*; here is one sworn, which is not the Act of the Clerk. *Brampton*; this is not the Act of the Clerk to swear him, but of the Court. *Croke*; the Statute *21 Jac.* doth not Aid this. *Jones*; it seems it shall be amended. *Berkley*; for this, was the Statute *21 Jac.* made. *Roll*; If the *Venire fac'* was mistaken, no Amendment might be before Statute *21 Jac.* and the Court said they would be advised; but they all agreed, that it may not be amended, but upon the Examination of the Party himself which was sworn, and if the Party dies, no Amendment may be *Omnino*, and because the Party was not here,

here, they would not speak further; but they examined the Sheriff *de bene esse*, and one Point was, If the Clerk wrote the Pannel out of the *Venire fac' or Distringas*; but adjourned till the Party came to be examined. And after the Juror was sent for out of the County of *Devon* and examined, and it was found by Examination to be the same Party; for which the Plaintiff recovered. *M. 15 Car.*

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## C H A P. XIII.

No new Ejectment without paying Costs of former. When to move, that the Lessor of the Plaintiff may give Security. Where the Defendant shall have Costs and Damages. How the Plaintiff may aid himself by Release of Damages. Where the Plaintiff to recover Damages, but not the Possession. Executor not to pay Costs. Lessor of the Plaintiff to pay Costs. Where Tenant in Possession liable to pay Costs or not. Feme to pay Costs on Death of her Husband. Infant Lessor to pay Costs of the Writ of Enquiry. The Entry. Writ of Error lies upon the Judgment before the Writ of Enquiry, and why. Writ of Enquiry, how abated.

**Title to Part.** **I**N Ejectment for 100 Acres, if the Plaintiff hath no Title he shall pay Costs, nor if he has a Title to any Part.

**When to move that the Plaintiff shall give Security.** Upon Confession of Lease, Entry and Ouster, the Defendant ought to move then, That the Lessor of the Plaintiff enter into Security to pay Costs, for perhaps he may be a Beggar; but the Court would not grant it upon Motion four or five Days before the Trial.

**None new Ejectment without paying Costs of the former.** If Judgment be given for the Defendant in Ejectment, the Plaintiff shall not be admitted to bring a new Ejectment without paying Costs of the former; but when Judgment is given

given against the Defendant, if he brings his Ejectment, the Plaintiff cannot stop his Proceedings till he pays the Costs of the former, because he has an Execution against him.

3 W. & M.

Costs paid by the Sollicitor or Attorney in Ejectment for the Insufficiency of the Lessor. Costs by Attorney or Sollicitor.

Levinz 66.

When only one of the Defendants hath Judgment against the Plaintiff, there the Plaintiff shall not pay Costs; so that if the Plaintiff in Ejectment suspects his Cause, his best Way is to declare against a Friend of his, and then if he finds the Costs likely to go against him, his Friend may suffer Judgment by Default, and that saves Costs. Judgment by Default.

When upon a Trial the Plaintiff becomes nonsuit, the Defendant must pay the Jury, which is after allowed him in Costs; for it's intended that he received a Benefit by this Nonsuit.

Costs to be allowed for not going on to Trial at the Assizes, upon Affidavit of the Matter brought to the Secondary, without Motion in Court, by Mr. Winford.

In all Actions of Trespass, Assault, false Imprisonment or Ejectment brought against several Defendants, if any of them be found Not guilty, he shall have his Costs, *per Stat.* 3 & 9 W. 3. c. 10. Sect. 1.

*The Jury are to find Costs and Damages in Debt,  
Trespass, Ejectment, &c.*

Regular.

Release of  
Damages.

If the Plaintiff mistake his Declaration, the Defendant shall have Costs. The Plaintiff may relinquish his Damages where part of the Action fails, and take Judgment for the other. And so is the Rule; If part of the Things demanded in this Action are well demanded, and part of the Things demanded are not well demanded, and Verdict is given for the Plaintiff for the Whole, and entire Damages are given, the Plaintiff may release all the Damages in that which is not demanded, and pray Judgment for the Residue; and this shall aid Error if Judgment be given accordingly. As in *Ejectione Firme* of a Messuage, Cottage and Tenement, if it be found for the Plaintiff, and entire Damages given for the Whole, because *Ejectione Firme* does not lie of a Tenement, the Plaintiff may release all the Damages, because it is entire, and have Judgment for all the Land saving the Tenement; and this shall not be Erroneous. So in Ejectment of Land, and *de libertate Piscarie*, for *libera Piscaria*, which is not good, the Plaintiff may release all the Damages, and have Judgment for the Land only, altho' he cannot be said properly to release Damages, as to the Piscary, where none were. Godb. pag. 354. No. 439. 1 Roll Abr. 786. Clive and Vere. 1 Rolls Abr. 784. Retorick and Chappel.

Wber

Where the Plaintiff shall recover Damages, but not the Possession.

If a Man brings an Ejectment, and lays the Demise (suppose) 1 Dec. and he had then a Title, and the Defendant confesseth Lease, Entry and Ouster, and gives in Evidence a Title to himself, which commenced 1 Jan. Here the Plaintiff shall recover his Damages from the 1 Dec. to the 1 Jan. but shall not recover the Possession, because it appears by the Verdict he had no Title to the Land the 1 Jan. *Whitfeld's Case, 5 Anne B. R.*

Ejectment was for Entry into a Messuage five *Tenementum*, and four Acres of Land to the same belonging. As to the Messuage *five tenementum*, the Declaration is uncertain, and if the Damages are released, the Costs are gone also. It is uncertain to which the four Acres belong, i. e. to the Messuage or Tenement. But *per Cur.* as to the four Acres it's certain enough, and the Words (to the same belonging) are meerly void. *3 Leon. p. 228. Wood and Pain.*

In Ejectment, Judgment is against the Defendant who dies, and his Executor brings a Writ of Error and is nonsuited. He shall not pay Costs; an Executor is not within the Statute for paying of Costs, *Occasione dilationis. Mod. Rep. 77.*

In Ejectment against Two, A. B. they prayed to be made Defendants, and were so, confessing Lease, Entry and Ouster, and at the Trial A. confessed so much as was in his

S 4                      Possession

Executor not  
to pay Costs.

## The Law of Ejectments.

Possession for certain; but *B.* would not proceed with him, and the Plaintiff was nonsuit against both. He that tried it prayed Costs, which the Court granted, but they must join in the Suit of Execution for Costs. 2 Keb. 219. Sir Cyril Wycb's Case.

Feme liable to pay Costs on Baron's Death. The Lessor of the Plaintiff shall be liable to Costs, the Lease being made by Baron and Feme; on his Death she is liable as well as other Jointenant surviving. 1 Keb. 827. Morgan and Stapel's Case.

The Lessor of the Plaintiff by several Rules of Court, on Demand, ought to pay Costs upon the Insufficiency, or Skulking of the Plaintiff in Ejectment. 1 Keb. 17.

Tenant in Possession liable to pay Costs by the Law. The Lessor of the Plaintiff is liable to pay Costs (tho' he shall never be forced to give Security for them); but the Lessor of a Tenant in Possession is not liable to Costs, because tho' he may come in *gratis* and defend his Title, yet the Tenant in Possession is only liable to pay Costs by the Law. But only by the Course of the Court, unless the Trial be by the Lessor's Means brought to the Bar, and then he shall never have a second Trial at Bar before he hath paid the Costs of the former Trial; yet the Court, for Non-payment of Costs, will not hinder Proceedings in the Country. Per Cur. 1 Keb 106. Latham's Case.

In Judgment against his own Ejector, no Cost to be paid by the Tenant in Possession. Note, Upon a Judgment against his own Ejector, in Default of confessing Lease, Entry and Quater, according to Rule of Court, without Special Rule no Costs shall be paid by *H.* the Tenant in Possession that made the Default, &c. Contra, upon Trial had against *H.* because

because the Plaintiff hath the Benefit of the Suit, *viz.* Judgment against his own Ejector, whereby he may recover the Possession.

*1 Keb. 242.*

Verdict was for the Defendant, and the Plaintiff to save his Costs alledged, That the *Venue* was misawarded, and that there was a Fault in the Declaration; but resolved *per Cur'* the Defendant shall have his Costs. *2 Rolls Rep. 327. Pritchard and Reynell. Palmer 365.*  
*mesme Case.*

Allegation by  
the Plaintiff  
to save his  
Costs, not al-  
lowed.

The Plaintiff in *Ejectment* was nonsuited, which was recorded, and the Defendant sued for Costs upon the *Stat.* *4 Jac. c. 3.* The Plaintiff alledged Insufficiency in his own Declaration to avoid Costs upon the Words of *the Stat.* *That in Ejectione Firme and every other Action where the Plaintiff might recover Costs, &c.* If it had been found for him, that then upon Nonsuit, &c. in every such Action the Defendant shall have Judgment to recover Costs against him; and the Plaintiff pretends in such Action he cannot recover where the Declaration is not sufficient. But *per Cur'*, there is no Reason the Plaintiff should take Advantage of his insufficient Declaration.  
*Palmer's Rep. 147. Dove and Knapp.*

The Plaintiff  
not to take  
Advantage of  
his own in-  
sufficient De-  
claration.

Debt was brought on the *Stat.* of *8 Eliz.* for Costs in an *Ejectione Firme*, the Plaintiff being nonsuited, supposing the Statute to be made *ad Parliamentum tentum* *8 Eliz.* whereas the Parliament began *Anno quinto*, and by Prorogation was held in *8 Eliz.* so it ought to have been *ad Sessionem Parliamenti tent' Anno Octavo Eliz.* and ruled to be ill. *Cro. Jac. 111. Ford and Hunter.*

Costs on *Stat.*  
*8 Eliz.* on  
Nonsuit, and  
the *Stat.* mis-  
taken.

Costs for Want of Continuances entered.

When Non-suit shall be for Want of a Declaration.

There need not be 15 Days between the Teste-day and Day of Return.

Infant Lessor pays Costs.

The sole Remedy for Costs in the first Trial is by Attachment, unless the second Trial be in the same Court after a Verdict.

If no Continuance be entered, then a Discontinuance may be entered, and he may recover Costs in Ejectment. 2 Bulstr. 63.

Per Stat. 13 Car. 2. c. 11. Nonsuit shall be for Want of a Declaration before the End of the next Term after Appearance, and Judgment and Costs against the Plaintiff. Stat. 13 Car. 2. c. 11.

In all personal Actions, and in *Ejectione Firme* for Lands, &c. depending by Original Writ, after any Issue therein joined, and also after any Judgment had or obtained, there shall not need to be Fifteen Days between the Teste-day and Day of Return of any Writ of *Venire fac'*, *Habeas Corpus*, *Jurat' Distringas*, *Jurat*, *Fieri fac' or Cap' ad sat'*, and the Writ of Fifteen Days between the Teste-day and the Day of Return of any such Writ shall not be assigned for Error. Stat. 13 Car. 2. c. 11.

Infant Lessor in Ejectment shall pay Costs. 3 Keb. 347. *Masten and King*.

Upon a Verdict against all Evidence the Court will tax Costs, and will not suspend it till a new Trial. 1 Keb. 294.

If the Defendant, whose Title is concerned in an *Ejectione Firme*, will not defend his Title to the Lands in Question, and the Verdict do pass against the Plaintiff, the Ejector may release the Damages. Pr. Reg. 100.

Note, This Rule, as to paying of Costs, if a Man had a Verdict in *Ejectment*, and Costs taxed, and an Attachment for not paying them; and whereas he cannot procure them of him who ought to pay them, he sues the same Party for the same Thing again in another Court, and he shews this by Motion, and

and prays he may not proceed till Costs paid; yet the Court will not grant it, but he ought to resort to the Remedy of the Process of the Court where he recovered for these Costs; and so it is if it was in the same Court for Costs for not going on to Trial; but if it were for Costs after a Verdict in the same Court, there, upon Affidavit of this, it's good Cause to stay the second Trial for the same Thing, unless the Costs of the First be paid. *Sid. p. 229.*

*Austin and Hood.*

Upon a Trial at Bar in *Ejectment* where Two were made Defendants, and had entered into the Common Rule; and at the Trial one appeared and confessed Lease, Entry and Ouster, but the other did not; and after Evidence given, the Plaintiff was nonsuited, and Costs taxed for the Defendants. *Per Cur'*, both these Defendants are intitled to the Costs, and he that did not appear, might release them to the Plaintiff. But the Court said, If there should appear to be Covin between the Lessor of the Plaintiff and the Defendant, who did appear to release the Costs, they would correct such Practice when it should be made to appear. *2 Ventr. 2 W. & M. Fagge and Roberts.*

Berkley had Judgment in *Ejectione Firme* in C. B. and Execution of his Damages and Costs. Foot brings Error, and the Judgment is affirmed; whereupon B. prays his Costs for Delay and Charges, but could not have them, for no Costs were in such Case at Common Law. And Stat. 3 H. 7. c. 10. gives them only where Error is brought in Delay of Execution; and here tho' he had not Execution of

of the Term, yet he had it of his Cost.  
1 Ventr. 124.

Administrator brought a Writ of Error upon a Judgment given in Ejectment against the Intestate. *Per Cur'*, he shall pay no Costs, tho' the Judgment was affirmed, and the Writ brought in *Dilatatione executionis.* 1 Ventr.

### *Writ of Inquiry.*

The Entry.

It was assigned for Error, That a Writ of Enquiry of Damages was awarded, and no Day given to any of the Parties to be there at the Time of the Return; for the Entry ought to be, *Ideo dies datus partibus prædictis*, or at least to the Plaintiff, that so he might then pray his Judgment, *sed non allocat'*, for the Defendant is not to have Day, and the Plaintiff is to attend at his Peril; and so is the Course of the Common-Pleas; *aliter in the King's-Bench.* Cro. El. p. 144. *Mathew and Hassel.*

E. in *Ejectione Firme* had Judgment by Default against the Defendant; whereupon a Writ of Enquiry issues out to enquire of the Damages, and before the Return thereof the Defendant brought a Writ of Error; the Question was, Whether the Writ of Error were well brought, in regard the Course of the Common-Pleas is not to make up the Judgment, until the Writ of Enquiry be returned. *Rolls* said, A Writ of Error may be brought before the Writ of Enquiry be returned in *Ejectione Firme*, for in that Action the Judgment is compleat at the Common Law before it be returned;

returned; for the Judgment is but to gain Possession, and so it is in a Writ of Dower. But in an Action of Trespass, where Damages are only to be recovered, there the Judgment is not perfect, till the Writ of Enquiry be returned, nor can be made up, as in this Case it may. But in regard that here is no compleat Judgment, for there is no *Capias*, which ought to be in all Actions *Quare Vi & Armis*, that the King may have his Fine, which else he cannot have, if the Party do not proceed in his Writ of Enquiry, the Writ of Error is brought too soon, and you may proceed to Execution in the *Common-Pleas*, for the compleat Record is not here. Afterwards, in another Case, *Rolls* was of Opinion, That it was a perfect Judgment; and it is in your Power (said he to the Defendant's Council) whether you will have a Writ of Enquiry or not; and if the Judgment be affirmed here upon the Writ of Error brought, you may have a Writ of Enquiry in *B. R.* the Council therefore moved for a *Certiorari*. *Rolls*; take it, but it will do you no Good, for the Judgment is well. *Stiles Rep. Glide and Dudenu's Case*, p. 122. *Crook and Sanny*. *Stiles* 127.

This Point is settled now in both Courts. The Writ of *In Ejectione Firme*, if the Plaintiff recover by *Error* lies up. *Nibil dicit*, in which Judgment is given, that the Plaintiff shall recover his Term, and a Writ is awarded to enquire of Damages, a the Writ of Error lies upon this Judgment before Enquiry, and the Return of the Writ of Enquiry of Damages, and Judgment upon it, for the Judgment is perfect as to the Recovery of the Term before by the first Judgment, and the Plaintiff may

may presently have Execution for the Possession; and peradventure he never will have Judgment for the Damages, and so the Defendant shall be ousted of his Possession *sans Remedy*. So it is if a Man recover in *Ejectione Firme* by Confession, or *non sum Informatus*, or Demurrer, a Writ of Error lies before the Damages taxed by Writ of Enquiry. 1 Rolls p. 750, 751. *Newton and Terry, Taverner and Fawcet, Booth and Errington*. 5 Rep. *Wymarsh, and House and Layton*. *Latch*, p. 212.

**Abatement**  
by Death af-  
ter Judgment  
or pendant  
Error, but not  
after Affir-  
mance.

Council prayed Abatement of a Writ of Enquiry on 16 and 17 Car. 2. c. 8. by Affidavit of *Cestuyque vie's* Death after the Judgment two Days; and by the Act from the Judgment affirmed in Error, which was a Term after, which the Court granted. But it were better the mean Profits were recoverable in Ejectment by the same Verdict. *Wild* held, this should be given in Evidence on the Writ of Enquiry, but being no Bar but in Mitigation, that is not sufficient; and it was stay'd, *Warren and Orpwood*. *Mic. 25 Car. 2. B. R.* 3 Keb. p. 218.

## CHAP. XIV.

Of Judgment in Ejectment and Execution. The Form of entring Judgments in this Action. How the Entry is when Part is for the Plaintiff, and Part against him. How against several Ejectors. The Form of the Entry in case of Death of the Plaintiff or Defendant. After Verdict and before Judgment the Plaintiff dies. Ejectment for the whole, and no Title but to a Moiety. For what Causes Judgments in Ejectment are arrestable or erroneous. In what Cases Judgment shall be amended. Of Judgment against ones own Ejector.

Note, **N**O Judgment in Ejectment till *Latait* filed, and Bail. 2 Keb. 743.

### The Form of entring Judgments in this Action.

In Cr. El. 144. *Matthew and Hassel's Case.* It was assigned for Error, That the Judgment was, *Quod recuperet possessionem termini praediti*, where it should be, *Quod recuperet terminum*; for as in a Real Action he is to recover Seisin, so in a Personal he is to recover Possession, and the Writ is *Habere fac' Possessionem.*

*Quod recuperet  
possessionem ter-  
mini.*

<sup>1</sup> *Leon. p. 175. mesme Case.*

All the Course of Entries, when Part is found for the Plaintiff, and Part against him, is to enter only, *Quod Def. est inde sine die* How the En-  
try is when  
Part is made  
*pro quer'*, and  
*quoad*, Part against.

*quoad, &c.* whereof he is acquitted. It was *Taylor and Woldboro's Case.* Cr. El. 768. Error of a Judgment in Ejectment was brought, because the Defendant was found Not guilty *quoad* a Third Part; and the Judgment is entered thereupon, *Quod Def. eat inde sine die & quer' in misericordia, &c.* whereas it ought to have been, *Quod le Plaintiff nil capiat per Billam* for that Third Part, *sed non allocatur causa qua supra,* Cro. El. 768. and the Court would have affirmed the Judgment, but because the Plaintiff had not appeared that Term, they caused him to be nonsuited.

In 1 Rolls Rep. 51. Error was assigned, because the Judgment in *Ejectione Firme* in Wales was, *Quod Def. sit quietus*, such Judgment being only given in a Writ of Right, and such Actions which are final; but this Action is not final, and the Judgment should be, *Quod Def. eat inde sine die.* Sir William Morris and Cadwallader's Case.

In *Ejectione Firme*, if upon *Non sum informatus* pleaded, Judgment be given, *Quod Def. remaneat indefensus*, without saying *versus Querent'*, yet it's good. 1 Rolls Abr. 772. Fiegot and Mallory.

Ejectment was against several Defendants, &c. they were fined severally, where the Ejectment was against them all jointly; but because they were found several Ejectors of several Parcels, the Judgment was good (*scilicet*) *quilibet capiatur quoad his Parcel;* and if it had not been joint, it had not been sufficient. Bendl. 83. Darcy and Mason.

*Quod Def. sit quietus.*

*Quod Def. remaneat indefensus.*

Against several Ejectors.

The

The Plaintiff shall be in *Misericordia* but once. As Ejectment with Force, Three of the Defendants were found guilty of the House and Ten Acres of Land, and Not guilty for the Residue. The fourth Defendant is found Not guilty general; and Judgment was enter'd, That he should recover his Term in the House and Ten Acres of Land, and Costs against the Three Defendants, and that the said Three Defendants *capiantur*, and that they be acquitted *quoad residuum*, and that the Plaintiff *quoad* the Three Defendants *pro falso clamore*, for so much as they were acquitted; & *pro falso clamore* against the fourth Defendant, *sit in Misericordia*. It's good enough, and the Course, that the Plaintiff in such Cases be in *Misericordia* but once, which is specially enter'd. *Cro. Car. 178. Dockrow's Case.*

In *Croke and Sam's Case, Stiles 122. 346.* the Judgment was, *Ideo considerat' est qd' recuperet, and there wants, & Def' capiatur*, it is erroneous.

*Form of the Entry in case of the Death of the Plaintiff or Defendant.*

Note, That Three Plaintiffs in Ejectment were, and on general Issue it was found for the Plaintiffs. And Four Days after the Verdict given, was moved to stay Judgment a special Matter in Law, whereof the Justices were not resolved, and gave Day over, and in the mean Time one of the Plaintiffs died. This shall not stay Judgment, for the *Postra* came in 15 *Pasch.* which was the 16th

## The Law of Ejectments.

of April, at which Day the Court ought to give Judgment presently. But Cur' *Advisare vult*, and on the 19th of April one of the Plaintiffs died, and the Favour of the Court shall not prejudice, for the Judgment shall have relation to the 16th Day of April, at which Time he was alive. *i Leon.* 187. *Isley's Case.*

*The Death of  
one Defendant shall not  
abate the  
Writ.*

In Ejectment, Two Defendants were found guilty, and the other not. The one that is not guilty dies, the Plaintiff shall have Judgment against the other. So it is, if he that is dead had been guilty, because this Writ is but as a Trespass, where the Death of one Defendant shall not abate the Writ, *Moor* 469. 673. *Griffith and Lawrence's Case.*

*Ejectiones a-  
gainst Baron  
and Feme,  
Baron dies.*

*Ejectione Firme against Baron and Feme;* and Verdict *pro Quer'*, and after, between the Verdict and Day in Banco, the Baron dies. And therefore the Court in *Lee and Rowley's Case*, *i Roll. Rep.* 14. advised the Plaintiff to relinquish this Action, and only to enter the Verdict for Evidence; for if Judgment is given against the Defendant, and one is dead at the Time of the Judgment, then this will be erroneous, *per Dodderidge and Mann Preignatory*. But Coke said, The Plaintiff may make Allegation that the Husband is dead, and shall have Judgment against the Wife. And it hath been adjudged lately, Ejectment against Baron and Feme, which are but one Person in Law; yet if the Husband dies, the Suit shall proceed against the Wife, *Hardr.* 61. But in *Rigley and Lee's Case*, *Cr. Jac.* 356. Ejectment against Baron and

and Feme, after Verdict Baron dies before the Day in *Banco*, because it is in the Nature of a Trespass, and the Feme is charged for her own Fact. *Per Cur'*, The Action continues against the Wife, and Judgment shall be enter'd against her self, because the Baron was dead.

Ejectment against divers, all plead Not Record where guilty ; and divers Continuances were be. not to be tween them all, where *revera* one of the amended. Defendants was dead after Issue joined, and a Verdict was after found *pro Quer'*, and the Record was moved to be amended. *Per Cur'*, we cannot do it. After Verdict and before Judgment the Plaintiff may surmise that the Defendant was dead before the Ver- One Defen- dient, and Continuance was against him as dant dies after in full Life. *Jones 410. Sir John Fitzherbert*; Issue joined. *versus Leech*. And,

In Ejectment to try the Custom of Copy-Suggestion hold, the Plaintiff was nonsuit, and one of enter'd on the the Defendants being dead, *Hales*, Chief Ju- Roll, one De- stice, advised to enter a Suggestion on the fendant being Roll that one was dead, else the Judgment dead after Nonsuit. for the Defendants on the Nonsuit will be er- roneous as to all. *Mich. 23 Car. 2. B. R. Haw- thorn and Bawdan*.

Ejectment was brought against Seven, Ejectment against Seven, One dies, hanging the Writ, and the Judg- gainst Seven, ment was given against the Six, without and one dies speaking any Thing of the Seventh, where hanging the the Judgment ought to be against them that Writ and Er- were in Life, and a *Nil cap'* as to him that or brought. was dead; otherwise there is a Variance between the Writ and Judgment: And a Writ of Error was brought, but it was not

## The Law of Ejectments.

well brought, for the Seventh joined in the Writ of Error, which was *ad grave damnum* of all the Seven. But had it been omitted *ad grave damnum* of him that was dead, it had been good. 2 *Rolls Rep.* 20. *Bethell and Parry, Pal.* 152. *Mesme Case.*

After Verdict  
and before  
Judgment the  
Plaintiff dies,  
and Judg-  
ment is given  
for him the  
same Term.

In *Hide and Markham's Case* it was ruled, That if one bring *Ejectione Firme* in *B. R.*, and there had a Verdict in a Trial at Bar; and after, before Judgment, he dies, and after the Judgment is given for him the same Term: This is not Error, for that the Judgment shall relate to the Verdict. But if the Verdict pass against the Plaintiff at the *Nisi prius*, and after, before the Day in *Banco*, he dies, and after Judgment is against him: This is Error, for as much as Judgment is given against a dead Man. 1 *Rolls Abr.* 768. and *Jurdan's Case, Ibid.*

The Plaintiff  
dies after Ver-  
dict, and  
Judgment  
was not stay-  
ed, and why.

The Plaintiff in Ejectment dies, *Addison's Case, Mod. Rep.* 252. Yet as that Case was, the Court would not stay Judgment; for between the Lessor of the Plaintiff and the Defendant there was another Cause depending, and tried at the same Assizes when this Issue was tried, and by Agreement between the Parties, the Verdict in that Case was drawn up, but agreed it should ensue the Determination of this Verdict, and the Title go accordingly: Now the Submission to this Rule was an implicit Agreement, not to take Advantage of such Occurrences as the Death of the Plaintiff, whom we know no Ways to be concerned in Point of Interest, and many Times but an imaginary Person. (*Per Cur'*, We take no Notice judicially, that the

the Lessor of the Plaintiff is the Party inter-  
ested, and therefore we punish the Plaintiff the Court  
if he release the Action, or release the Da- takes of the  
mages.) It was said too in Behalf of the Lessor of the  
Judgment, That there was a Man of the Plaintiff.  
same Name in the County with him that  
was made Plaintiff: And by the Court that  
is sufficient, and the Court shall intend it to  
be him, were there any one of the same  
Name in *rerum natura*.

It is said in *Cooper and Franklin's Case*, If Ejectment for  
one brings *Ejectione Firme* for the whole, ha- the whole, and  
ving Title but to a Moiety, that it hath been a Title but to  
adjudged against *Bracebridge's Case*, in *Plowd.* a Moiety,  
he shall have Judgment for a Moiety. 3 Bul. Judgment  
stode 185. shall be for  
the whole.

*In what Cases, and for what Causes, Judgments  
in Ejectment are arrestable or erroneous.*

In *Savern and Smith's Case*, Judgment Judgment for  
was *de integris tenementis*, where it ought to the whole  
have been for a Moiety: The Judgment where it  
was given for the whole, and intire Da- ought to be  
mages assed by the Jury. It is Error.

Cro. Car. 7.

The Declaration was, *Qd' per Indentur' ad-*  
*misit decimas garbar' Rectorie de, &c. una cum*  
*quodam borreo & gardino eidem Rectorie pertin'.*  
And the Judgment on Demurrer on the  
Plea was, *Ideo, &c. qd' præd' Querens recu-*  
*peret vers' præfat' Def' terminum suum prædict'*  
*adbuc ventur' de & in Rectoria borreo & gar-*  
*dino prædict' cum pertin' & damna sua.* And More Dam-  
more Damages is found in the Return of the ges found  
Inquisition than the Plaintiff counts. And Plaintiff  
the counts.

the intire Rectory was not let, and no Term supposed in it in the Declaration, but in the said Three Particulars, and no express Judgment is given, for the Tythes and Damages are alledged for the Expulsion of the intire Parsonage, of which there was no Complaint. It seems it is erroneous. *Dyer 258. Plow. 19. 1 Bulstrode 49. 10 Rep. 117. 3 Cro. 544.*

Against Guardian and Infant *quod capiantur.*

*Ejectione Firme* was brought against Four, whereof One was an Infant, and appeared by his Guardian, and Verdict was *pro Quo*, and Judgment against them *quod capiantur*. But no such Judgment ought to be against an Infant, and it is Error, and Judgment was reversed. *Cr. Jac. 274. Holbrook and Doyle's Case.*

Infant appear-  
ed by Attor-  
ney.

C. one of the Defendants at the Time of the Judgment was within Age, and appeared by Attorney, where it ought to have been by his Guardian, the Judgment being upon Verdict. *Per Cur'*, it's Error; and in regard Damages and Costs are intire, the Judgment shall be reversed for both. By the Statute 21 Jac. 13. Judgment shall not be arrested, for that the Plaintiff in any *Ejectione Firme*, or in any personal Action, being under Age did appear by Attorney, and the Verdict did pass for him.

Not severing, Judgment was revers'd in Error of a Judgment in C. B. in not severing for what Part by Number of Acres by special Verdict, and giving intire Damages to the Plaintiff 2 Keb. 250. *Mackworth and Thomasin.*

Note,

*Note*, If it appear by the Record of a special Verdict that the Plaintiff had Priority of Possession, and no Title was found for the Defendant, the Plaintiff shall have Judgment.

2 Sanders 112.

*Ejectione Firme* was against Baron and Feme: *Versus Baron and Feme*  
On Not guilty pleaded, the Feme was found *quod capiantur,*  
guilty, and the Baron not guilty; and the *tho' the Baron*  
Judgment was against Baron and Feme *quod* *be found not*  
*capiantur.* This was assigned for Error; but *guilty.*  
the Plaintiff had Judgment, for so are all the  
Precedents: But in the Writ it was *Vi & armis*, *Vi & armis*  
and in the Declaration *Vi & armis* was left *left out in the*  
out, and for this Cause Judgment was reversed. *Declaration.*  
Cro. Car. 406. Mayo's Case.

In *Ejectione Firme*, if Judgment be given *Writ of En-*  
upon Demurrer, or by Default, or on *Non* *quiry of Da-*  
*sum informat'*, for the Plaintiff to recover the *mages, with-*  
Term, but it's awarded that there shall be a *out saying*  
*Writ of Enquiry of Damages, without saying*  
*Quod capiatur;* this is erroneous, for it may  
be he will never enquire of the Damages,  
and make Return of it; and then the Fine  
due upon the *Capiatur* will be lost. 1 Rolls  
Abr. 769.

*Note*, On Not guilty pleaded, Issue is join'd, and a special Verdict found, and upon this Verdict Judgment given against the Plaintiff, and after the Plaintiff brings a Writ of Error, Plaintiff and in this the Judgment is reversed, the Plaintiff shall have Judgment to recover his Term, his Declaration being good, and the Law being for him on the special Verdict: For the Court which reverseth the first Judgment, ought to give the same Judgment which was given in the first Suit. 1 Rolls Abr. 774.  
Omalcown and Eyres.

Before Judgment the Lease expires, the Plaintiff shall have Judgment for Damages.

Twenty Acres enter'd for Ten Acres.

*Quod recuperet terminum left out.*

Variance of Parcels.

Amendment.

Note also, If before Judgment the Years of the Lease expire, the Plaintiff had Judgment to recover Damages; otherwise in Actions where Freehold is to be recovered. *Savile 28.*

*In what Cases Judgments shall be amended.*

The Jury find the Defendant guilty of Ten Acres, and the Judgment was entered of Twenty Acres; the Judgment was amended. *Winch, p. 8.*

If on *Non culp'* pleaded, a Verdict is for the Plaintiff, and Costs and Damages given; and upon this the Judgment is *Quod quer' recuperet* the Damages and Costs, and not *Quod recuperet terminum*, as the Use is: This is the Default of the Clerk, and so amendable. *I Rolls Abr. 206. Belfh and Pate.*

The Clerk of the Entries of the Judgments had mistaken the Parcels, the Jury having found several Ejectments in several Parcels; they find *S.* had ejected him out of certain Parcels by a certain Name, and *T.* had ejected him out of other Parcels by a certain Name, and mistook that *S.* had ejected him out of the Parcels that *T.* had ejected him, having the *Distringas* for his Direction. But it was amended, for the Entry was, *Quod recuperet versus S. unum Messuagium, &c.* which was the Ejectment made by *T.* and so vice versa, whereas the Court's Judgment was, *Quod Judicium iuratur pro Quer'.*

In *Ejectione Firme* of One Messuage, Two Cottages, and certain Lands, and the Jury find the Defendant guilty of the Moiety of a Messuage and Lands, and not guilty of the Two Cottages, and of the other Moiety of the Messuage and Lands, and Judgment is, *Quod quer' recuperet Terminum suum p̄dict' de medietate tenementorum p̄dictorum, & eat inde sine die for the Residue:* And this Judgment, although it may be intended that Judgment is given for the Moiety of the Two Cottages, whereof he is found Not guilty, in as much as it is *tenementorum p̄dictorum*; yet it shall be amended, it being only the Default of the Clerk, having the *Postea* before him when he enter'd the Judgment. *1 Rolls Abr. 206. Sawyer and Hoskins.*

*Judgment quod recuperet, and saith not terminum, yet amended. 1 Keb. 155.*

The Judgment was, *Quod recuperet* the Possession of a Messuage, Sixty Acres of Land, Fifty Acres of Meadow, and Fifteen Acres of Pasture; whereas the Verdict was enter'd, That he was found guilty of the Ejectment of a Messuage, Ten Acres of Meadow, and Thirteen Acres of Pasture, and for the Residue Not guilty; so as there is not any Land in the Verdict, and a lesser Quantity of Meadow and Pasture than is in the Judgment. *Per Curiam*, it is amendable, and is not like the Entry of a *Capiatur* for a *Misericordia*, which is not amendable, that being an Error in Point of Law, and cannot be imputed to the Default of the Clerk. But here the Verdict is the Guide to the Judgment; and when the Ver-

Amendment  
for Misprision  
of the Clerk.

Verdict is before the Clerk to enter up the Judgment, it is but his Misprision, especially the Entry of the Judgment in the Paper-Book being right according to the Verdict. *Cro. Jac. 632. Mason and Stephenson.*

## EXECUTION.

Two Defendants, one confesseth, the other pleads Not guilty.

In Ejectment against two, one confesseth, the other pleads Not guilty, and at the Trial the Plaintiff is nonsuited, he cannot take Execution against him that confesseth; but if by Rule of Court one be made Defendant for Part, and confess, the Plaintiff notwithstanding the Nonsuit may take Judgment against him that confesseth for his Part: But if each Defendant take upon him the whole Title, the Plaintiff in any Case cannot have Execution; but one Defendant being Lessor of the House, reserving a Chamber, who never had any Notice of the Action, and therefore Judgment enter'd of the whole House, is not void *quoad* the Chamber only, but wholly. And *Hide* would have had the Attorney, who enter'd Judgment, pay Costs, but ordered the Possession to be delivered to the Tenant on Agreement to relinquish the Costs. *1 Keb. 786. Burgoigne and Thomas.*

*Scire fac' upon Judgment in Ejectment may be brought by the Administrator of the Lessee or Lessee for himself.*

It was a Question much debated, If a *Scire fac' quare Executionem habere non debat*, upon a Judgment in *Ejectione Firme*, may be brought by the Administrator of the Lessee (the Plaintiff in Ejectment, or by the Lessor himself) against the free Tenants? And *per Cur'*, the Lessee or Lessee or his Administrator, as well as the Lessor

Lessor himself, shall have this Writ in such a Case; this was on Demurrer to the *Scire fac'*: Yet the Lessee nor his Administrator shall have it, but the Lessor himself. *Sid.* 317. *Cole and Skinner.*

*Note,* Baron and Feme are ejected out of Recovery by a Term in the Right of the Wife, and the Husband recovers in *Ejectione Firme* brought by him in his own Name; this is an Alteration of the Term, and vests it in him only.

*1 Inst. 46.*

*Note,* It was adjudged in *Throgmorton and Sir Moyle Finch's Case*, That after Judgment for the Mortgagee in Ejectment, a Court of Equity cannot relieve the Mortgagor; but he ought to have preferred his Bill before Judgment, 3 *Bulstr.* 118. The Case was, He, by whom the Money was sent to be paid for the Redemption of the Land, was by the Way robbed of the Money; but the Money was paid presently after.

*Note also,* In *Ejectione Firme*, if a Rule is given to the Defendant to answer, and he upon *Nihil dicit*, but upon Motion in Court, doth not, and upon this another Rule is given to answer peremptorily, and he fails to do it, no Judgment shall be enter'd against him on a *Nihil dicit*, but upon Motion in Court.

It is said in *Carter and Claypool's Case*, 1 *Rolls Abr.* 887. If a Man recover in *Ejectione Firme* against J. S. who after dies, he must sue Execution against his Heir; for by Intendment J. S. his Ancestor, the Ejector, was a Disseisor.

Of

## Of Judgment against one's own Ejector.

Judgment against the casual Ejector, Council prayed that he might not plead to the Declaration of *Michaelmas Term* on Lease of the Bishop of Worcester made this *January*, *Habend' from the 20th of October last*, which is ill per Declaration is *Cur'*, and Judgment stayed. But this is a good of that Term Declaration of this Term by new Delivery, when the Tenant appears. though of Course a Declaration is of that Term always when the Tenant appears, which was but this Term, yet Judgment stayed. 3 *Keb. 729. Hill. 18 Car. 2. Finch and Pley.*

The Action was of *Easter Term*, and the Demise and Title of the Plaintiff is but Two Day before *Trinity Term*, and there was a Rule for Judgment against the casual Ejector. *Per Cur'*, This is but a Trick to gain Possession, as Sir Richard Mincham's Case was, who delivered Ejectments in his Wife's Life-time on Lease then when he had Title, as of subsequent Term when she was dead; and it is not fit to put the Tenant to a Writ of Error: So the Rule was set aside, and order'd a new Declaration. 3 *Keb. 343. Trin. 26 Car. 2. Stedman's Case.*

When Judgment against ones own Ejector to be enter'd.

Judgment against one's own Ejector cannot be enter'd till the *Postea* returned and indorsed, that the Nonsuit was for want of confessing Lease, Entry, and Ouster, which the Secondaries agreed for a Rule. 1 *Keb. 246. Sir Hugh Middleton's Case.*



Note,

Note, After the common Rules are out in Motion for a Ejectment, you must move for a peremptory Day before you can have Judgment. And in London and Middlesex the Court usually orders to plead the next Day, or else Judgment; but in other Countries, till Four Days after Term.

Judgment in Ejectment against the casual Ejector set aside, because the Tenant in Possession, who received the Declaration, died before the Term wherein he ought to have appeared, and no Costs allowed, *quia estactus Dei*. It was objected by Serjeant Tremaine, That where the Landlord and Tenant for Years were admitted Defendants in Ejectment, the Landlord died, yet Judgment was obtained against the Tenant. But the Court took a great Difference; for in the first Case the Tenant dying, there is no Body to defend, but in the last Case the Tenant was admitted to defend.

Judgments in Ejectment against casual Ejectors for want of an Appearance shall be set aside, and Restitution granted if no *Latitat* hath been sued out against, nor common Bail filed for such casual Ejector or nominal Defendant within Fourteen Days after such Appearance. *Trin. 4 Will. & Mary, per Cur'*.

Council prayed Judgment against his own Ejector in an Action for Lands in the County Palatine of Chester, which the Court granted; because when the Defendant hath pleaded to Issue, they may try it by *Mittimus* in the County Palatine. *2 Keb. 135. Reddish against Smith.*

Death of the Tenant before the Term.

against casual Ejector not good, if common Bail be not filed in Fourteen Days after Appearance.

Judgment against one's own Ejector for Lands in Com' Chester.

In Ejectment, Verdict was *pro Quer'* in B. R. and a Writ of Error was brought in the House of Peers. It was moved, whether a *Capiatur* shall be awarded against the Defendant, which is usually done, *ex Officio*, for a Fine to the King for a Breach of the Peace. But now by Statute 5 & 6 Will. no *Cap' pro Fine* shall be prosecuted against the Defendant, either in Trespass, Ejectment, Assault, or false Imprisonment, in Lieu whereof the Plaintiff is to pay the proper Officer, upon signing the Judgment, 6 s. 8 d. over and above the usual Fees. So that now it will be Error to have a *Capias* awarded, since the Act prohibits the Execution by remitting the Fine. And the Court was of Opinion, that the *Capias* should be wholly omitted.  
5 Mod. 285. *Lyndsey* and *Sir Thomas Cook*.

C H A P. XV.

Habere facias Possessionem.

i Keb. 579.

How this Writ is to be executed: And when, and in what Cases a new Habere facias Possessionem shall be granted or not. How the Sheriff is to deliver Possession. Habere facias Possessionem after the Year without Scire fac', and why. A Tenant readmitted upon his attorning Tenant.

THIS Writ is made out by the Clerk of the Judgments after Costs taxed and the Judgment signed.

In Ejectione Firme of 20 Acres of Land, the Defendant on Not guilty pleaded is found guilty for 10 Acres, and not guilty for the Residue. Now the Plaintiff at his own Peril, upon his own shewing which they are, shall be put in Possession. *Savil, p. 28.*

Plaintiff at his own Peril to be put in Possession of the Acres

And if a Man bring Ejectione Firme of 40 Acres of Land, and recovers 30, and not the Residue: Upon the Writ of Execution the Sheriff may deliver to him any, (*viz.*) Three or more of the Acres in the Name of the whole, without setting out the Land, recovered by Metes and Bounds; though the Plaintiff had not recovered all the Acres, whereof he brought the Action, and whereof he had supposed the Defendant Tenant.

How the Sheriff must deliver it.

i Rolls Abr. 886.

How

## The Law of Ejectments.

How the Sheriff may justify the removing of the Goods out of Possession upon a Writ of *Habere facias Possessionem*. *Lut. 1486.*

The Tenant readmitted upon his turning Tenant.

Judgment was obtained in Ejectment by Default, and a Writ of Possession executed, and the Tenant and all his Family turned out of Possession, and the Tenant was immediately readmitted upon his atturning Tenant. Afterwards another Person serves the Tenant with a Declaration in Ejectment, and the Tenant atturns to him; and the first Man who recovered, sued out a Writ of Possession upon his Judgment, and executed it; but it was set aside, because the Plaintiff had upon his first Execution the Effect of his Judgment, and might have kept the Possession when it was delivered to him by the Sheriff. *s W. & M.*

How the Sheriff is to esteem the Acres.

Where Delivery of one Messuage in Name of all by the Sheriff is sufficient or not.

Now if a Writ of Execution go to the Sheriff to put a Man in Possession of 20 Acres of Land, the Sheriff ought to give him 20 Acres in Quantity, according to the Usage of the Country, and not according to the Usage of the Statute. And if a Man recovers divers Messuages, the Sheriff (upon the Writ of Execution) may make Execution of one in the Name of all, without going to every one in particular; but if in such Case the Messuages be in the Possession of several Men, he ought to go to every House particularly, and of them to deliver Seisin, and the Delivery of Seisin of one in the Name of all is not sufficient. *Floyd and Bethel.*

When many Acres are in Demand, and but Part recovered, and the *Habere fac' Possessionem* comes to the Sheriff to deliver Execution

cution of the Land recovered, it does not suffice there to give one Acre in the Name of the whole recovered; but he ought to set forth all the Acres particularly, so that the Recoveror may have Benefit of the Judgment in Certainty, and the several Profits without Interruption. *Pal. Rep.* 289. *Molineux and Fuljam.*

Where the Sheriff is to give all the Acres in particular.

## Sometime a Rule of Court is to give Possession.

If one recover Rent or Common, a Writ issues out to the Sheriff to put him in Possession, and the Sheriff comes upon the Land, and delivers him Seisin of the Rent or Common by Parol, this is well done.

How the Sheriff is to give Possession of Rent or Common.

22 *Aff.* 84.

*Habere facias Possessionem*, if executed, is good without Return. But the Court may command the Sheriff to return it. *I Rolls* good without *Rep.* 77.

*Habere facias Possessionem* good without Return.

Note, The Sheriff, in Cases where Land is recovered, is to put the Party in Possession and Seisin by a Twig, Clod, &c. of an House, by the Key, &c. of Rent, by Corn or Gras growing on the Land, out of which the Rent issues. *6 Rep.* 52.

How Possession to be given of House, Land, or Rent.

Error was of a Judgment in the King's-Bench in Ireland, and Judgment for the Defendant was reversed, and Judgment given for the Plaintiff, *Quod recuperet terminum suum predictum?* It was moved how *Habere facias Possessionem* should be awarded; and it was resolved, That there should be a Writ directed to the Chief Justice in Ireland to reverse that Judgment,

*Habere facias Possessionem*, how awarded into Ireland.

ment, commanding him to award Execution.  
Cro. Car. 511. *Mulcarry and Eyres.*

*In what Cases a new Habere facias Possessionem shall be granted or not, and of the Sheriff's Demeanor therein.*

Where the Plaintiff shall have a new *Habere facias Possessionem.*

*Nota pro Regula,* That after *Habere facias Possessionem* executed, be it by the Sheriff, or voluntary Delivery of Possession, if the Party be turned out again by the Defendant's Means, he may have a new *Habere facias Possessionem* on Motion in Court, and an Attachment against him: But if after quiet Possession others enter, he must have a new Action or Restitution, else by this Means, by Practice the Plaintiff may turn out any of his After-Lessees on Non-payment of Rent. Had actual Possession been by Agreement of the Parties, or by Delivery of the Sheriff, the Party can never after have a *Habere facias Possessionem:* But if there be Agreement to deliver Possession *in futuro*, if it be denied, a new Writ may be had. But after the Year there must be a new Motion for it in Court. With this agrees *Pearson and Tavernor's Case*; if one recovers in Ejectment, upon which the Recoveror was put in Possession *per Habere facias Possessionem*, and after the Defendant ousts him again, if the Writ was never returned, (because then it appears not that the Plaintiff was ever out of Possession) a new Writ shall be granted. 1 Keb. 779. *Ratcliff and Tate*, 1 Keb. 785. *Lovelace's Case*, 1 Rolls Rep. 353. *Pearson and Tavernor's Case.*

It

It is expressly resolved in Dame Molineux and Falgam's Case, Palmer, p. 289.

If *Habere facias Possessionem* go to the Sheriff, When the and he returned Execution of the Writ, and Writ of *Habere facias Possessionem* is returned and filed, the Court may not award a new *Habere facias Possessionem*; but before they may, because in the first Case it appears the Party had Execution. The Council prayed, That the Defendant might file an *Habere facere Possessionem*, to the Intent that no new one may be taken out, or that that was taken out should not be filed after the Return of it, which the Court refused, for the Party hath Election to return it or not, and may renew it at Pleasure till an effectual Execution be had; albeit the Party had Execution, yet if there were any sudden Expulsion of him, he shall not be estopped.

2 Keb. 245. Underhill and Devereux.

Also, if the Sheriff give Seisin but of Part, New *Habere facias Possessionem* may have a new *Habere facias Possessionem*.

So in Stile's Case, 2 Brownl. 216. Stiles upon a Judgment in *Ejectione Firme* was put into Possession by the Sheriff by *Habere facias possessionem*, and after the Defendants enter again, and the Writ was returned, but not filed.

*Per Cur'*, He may not have a new Writ of Execution, but is put to his new Action, and the Filing of the Writ is not material, for it is in the Election of the Sheriff, if he will return it or not. But if Execution had not been fully made, as in case of Persons hiding themselves in the upper Lofts, and after the Sheriff was gone they ousted those that were in Possession, in this Case a new Writ of Execution

It is at the  
Election of  
the Sheriff,  
whether he  
will return it  
or not.

## The Law of Ejectments.

Where the first Writ is not fully executed, the Court will grant a new one.

If the Sheriff delivers more Acres than are in the Writ.

cution was awarded. But by the Chief Justice, if the Sheriff put a Man in Possession, and after the other enter forthwith, in this Case the Court may award an Attachment against him for Contempt against the Court; and so an Attachment was awarded upon Affidavit in *Gallop's Case*, 2 Brownl. 253. To this Purpose is *Upton and Well's Case*, 1 Leon. p. 145. Upon the *Habere fac' Possessionem*, the Sheriff returned, that in the Execution of the said Writ he took the Plaintiff with him, and came to the House recovered, and removed thoreout a Woman and Two Children, which were all the Persons which upon diligent Search he could find in the said House, and delivered to the Plaintiff peaceable Possession to his Thinking, and afterwards departed; and immediately after, Three other Persons, who were secretly lodged in the said House, expelled the Plaintiff again: Upon Notice of which he returned again to the said House, to put the Plaintiff in free Possession, but the others did resist him, so as without Peril of his Life, and of them that were with him in Company, he could not do it. And upon this Return, the Court awarded a new Writ of Execution, for that the same was no Execution of the first Writ, and also awarded an Attachment against the Parties. 1 Leon. 145.

If the Sheriff delivers more Acres than are in the Writ, this makes not the Writ erroneous, but Action on the Case lies against the Sheriff for doing it; but if the Writ of *Habere fac' Possessionem* contains more Acres of Land than were in the Declaration, the Writ is erroneous.

Upon

Upon *Ejectione Firme*, and Judgment *Hab' fac' Possessionem* shall be after the Year without a *Scire fac'* as to the Damages, yet it's not absolutely requisite that there should be any *Scire fac'* as to the Land; for if the Party take Possession of other Land than he ought, *Trespass* lies, 1 *Sid.* 351. *Okey* and *Vicars*. *Scire fac'* is given in personal Action per Stat. *W. 2.* where the Remedy was after the Year to commence a new Action on the same Judgment, which cannot be in this Case as to Land, though it may be as to Damages; on Judgment for Damages, Costs or Debt, there must be a *Scire fac'*, for here is a Person certain charged; not so in *Hab' fac' Possessionem*, 2 *Keb.* 307. *Mesme Case*; but the *Hab' fac' Possessionem* shall not be granted an Year after the Judgment without a Motion in Court. And if it be once executed, tho' the Parties are turned out presently by a Trick, yet they may not have a new *Hab' fac' Possessionem* without Motion of the Court. *Siderfin*, p. 224.

*Note*, It was a Question in one *Hill's* Case, upon the Statute of Maintenance: A Man was out of Possession, and recovered in *Ejectione Firme*, and was put in Possession by *Habere fac' Possessionem*, Whether he might sell presently? And adjudged he might. *Godb. p. 450.*

Upon the *Habere fac' Possessionem* the Sheriff may break open the House to deliver Possession. 5 *Rep.* 91.

Where *Hab' fac' Possessionem* shall be after the Year without *Scire fac'*.

Not to be granted after the Year, without a Motion in Court.

Return de Hab' fac' Possessionem cum  
Fieri fac'.

Virtute istius brevis mihi direct' 24  
die Maii Anno infra scripto Habere  
feci infra nominat H. H. Possessionem  
Termini sui infra scripti de Tenementis  
infra script' cum pertin' ac etiam Fieri  
feci de Terris & Catallis infra nomi-  
nat W. W. 205. Parcel Damno infra  
script' & denarios illos haber coram Ju-  
sticiariis infra script' ad Dicm & Locum  
infra content' ad reddend prefat H. prout  
interius mihi præcipitur.

*Of Misdemeanors in Possession.*

In Ejectment, Declarations were delivered; and on Verdict, Evidence was found for the Plaintiff against some, and Judgment against the casual Ejector for others, in the whole 47 Houses. Upon Colour of *Hab' fac' Possessionem* the Sheriff turns out of Possession these 47 Tenants, and 80 other Tenants also, without any Process or Plea against them, for the Execution of which Writ the Sheriff took of the Plaintiff 200*l.* for Fees. 1. The Court would not grant any Writ to supersede this Execution against the 80, for if so, then it ought to be *Quia erronice*, and there was not any Error in the Proceedings against them, because there was no Proceedings against them; but they may bring Trespass against the Sheriff, and the Sheriff shall be indicted for Extortion, for they cannot take such Fees in case of real Estate as personal. 2 Sid. 155. There

There is a remarkable Case in *Siderfin* 254. the King against *Farr*. *Farr* being a Sollicitor, had obtained a Judgment against the casual Ejector, upon which he sues *Hab' fac' possessionem*, and the Sheriff's Bailiffs enter the House with him, and break the Door where the Goods were, and take the Woman to whom the House and Goods belonged, and required of her special Bail, and for want of it brought her to *Newgate*; then *Farr* took the Goods, which were of great Value. And upon *Trial* at the *Old Baily* it appeared, That *Farr* did this with Intent to take away the Goods, and had no Colour of Title to the House for his Client. He was found guilty of Felony, and was hanged, not being able to read, though he were a Sollicitor.

The Court was moved for an Attachment against *J.* upon an Affidavit that he had ejected one out of Possession that was put in by *Hab' fac' possessionem*, and that in a very riotous Manner, and had imprisoned the Party so put out of Possession. The Council on the other Side answered, That the Party came into the Land by Virtue of an Eigne Judgment, and an Extent upon it. *Rolls*; Here is Title against Title, therefore take your Course in Law, for we make no Rule in it. *Stiles*, p. 318. *Fortune and Johnson's Case*.

Verdict for the Plaintiff was found in Ejectment: But upon Agreement made between the Plaintiff and Defendant, the Defendant was to hold the Land recovered for the Remainder of his Term to come, and according to this Agreement held it for Two Years; but afterwards, before his Term expired, the Plain-

## The Law of Ejectments.

tiff takes out a *Hab' fac' Possessionem* and executes it. It was moved, That the Defendant might have a Rule for Restitution. *Per Cur'*, it cannot be: Take your Action on the Case against the Plaintiff for not performing his Agreement. *Stiles Rep.* 408. *Wood and Markham.*

Possession was delivered by *Habere fac' Possessionem* about Nine a Clock in the Morning, and towards Six at Night the Plaintiff was forcibly turned out of Possession; and this Matter being set forth by *Affidavit*, the Court held, that upon an *Hab' fac' Possessionem* it is not a compleat Execution till the Sheriff or his Bailiff deliver Possession to the Party, and are gone away; that if immediately after such Execution the Defendant turns him out of Possession, it would be a Disturbance of the Execution, for which an Attachment ought to go. And *Powell*, Justice, cited a Case in *B.C.* where, upon an Entry upon the Plaintiff, the same Day he had Execution the Court granted a new *Hab' fac' Possessionem*. To which, *Holt*, Chief Justice, answered, So they might if the first Executions were not returned, otherwise not, *Qd' curia concessit*. *M. 2 Anne, B. R. King-dale versus Mane.*

CHAP.

## C H A P. XVI.

Of Action for the mean Profits : In whose Name. What Evidence shall be given in this Action or not. From what Time. Where the Plaintiff brings this Action. What he must prove at the Trial. Where the Lessor brings this Action. What he must prove.

THE Action for the mean Profits on the Judgment in the Ejectment, shall be in the Name of the Lessee during his Term.

And Note, In this Action no Evidence shall be given, as to the Right, which must be if the Action should be in the Lessor's Name, and therefore he can have no such Remedy.

*1 Keb. 731. Sadler and Taylor.*

A Trial at Bar was prayed in Action for mean Profits. But the Court denied it, because how good a Title soever the Defendant hath, he cannot give in Evidence any other Matter than what was before ruled. But by *Twisden* the Title being admitted, other Matter may be given in Evidence, as a Release or Fine by the Plaintiff : And the same Law is in Action by the Lessor, in the former Action as by the Lessee, and against the Under-Tenant, or any that claim under the former Defendant's Title, especially the Contest being for Profits during the Time of the former Action hanging.

So it is said in *Harris and Wills's Case*: If Recovery be in Ejectione Firma, and after Tres.

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Trespass is brought for the mean Profits before the Lease, nothing shall be given in Evidence but the Value of the Profits, and not the Title; for if it should be so, then long Trials would be infinite. Also, if it be between the same Parties, the Record is an Estoppel; so the Court held it should be, if it were against Under-Tenants. But the Court granted a Trial at Bar, in Assurance they would not insist upon the Points formerly adjudged, but admit it, and insist upon new Title. *Siderf.* p. 239. *Collingwood's Case.*

In *I W. & M.* The Court was moved to set aside a Verdict, recovered in an Action for the mean Profits after Recovery in Ejectment, shewing that the Defendant in the Ejectment had brought another Ejectment since, and recovered; so that the first Recovery was disaffirmed, and therefore there ought to have been no Recovery for the mean Profits; but the Motion was denied, *per tot. C. 2 Ventriss Reports.*

Trespass lies by Recoveror in erroneous Judgment for a mean Trespass; because the Plaintiff in a Writ of Error recovers all mean Profits, and the Law by Fiction of Relation will not make a wrong Doer punishable. *13 Rep. 22.* But *contra*, where Act of Parliament restores.

In Trespass with *continuando* to recover mean Profits, an Entry and Possession of the Land before the Trespass must be proved; and also, another Entry after the Trespass. Lessor is the principal Person look'd upon in the Law to sue for the mean Profits. *2 Keb. 794.*

A Termor being outlawed for Felony, granted his Term and Interest to the Plaintiff, who is put out by *J. S.* and after the Outlawry is reversed; and the Plaintiff brought Trespass for the Profits taken between the Outlawry reversed and the Assignment: Adjudged, that the Action did lie; for tho' during that Time the Queen had the Interest, and the Assignee had Right, yet by the Reversal it is as if no Outlawry had been, and there is no Record of it. *Cr. Eliz. 270. Ognell's Case.* It was held by Justice *Vernon*, where a Man would recover the mean Profits in Trespass, he must prove Entry into every Parcel, and not into one Part in the Name of all. An Action of Trespass came to Trial before *T.* for recovering the mean Profits, and the Trespass was laid the 11th of *May* with a Continuation, and the first Entry was before the 17th Day; and an Ejectment had been brought of this Land the same Assizes; and because a second Entry is required to recover the mean Profits, the which, if it shall be, will happen after that Time which he hath acknowledged himself out of Possession by his Action of Ejectment, and such Entry will abate the Action; it was directed to find Damages for the first Entry only.

It is a Rule in Law: By the Re-entry of the Disseisee, he is remitted to his first Possession, and is as if he had never been out of Possession, and then all who occupied in the mean Time, by what Title soever they come in, shall answer to him for their Time; as if a Disseisor had been disseised by another, the first Disseilee re-enters, he shall in Trespass punish

punish the last Disseisor; otherwise, after his Re-entry, he should have no Remedy for his mean Profits.

*Note,* In Trespass for mean Profits, Special Bail is always given. *1 Keb.* 100.

Writ of Enquiry for mean Profits how abates.

In whose Name.

Writ of Enquiry for mean Profits abates by Death after Judgment, and before or pendent Error, but after affirm'd is in Mitigation. *Warren and Orpwood.* 3 *Keb.* 205.

Where one declares on a Fictitious Lease to *A.* for three Years, and within the same Term declares of another Fictitious Lease to *B.* of the same Lands; the last is not good for Trespass, for the mean Profits must be brought in the first Lessee's Name, *ut dicitur.*

It's a Note in *Siderf.* p. 210. If one recover, and had Judgment in *Ejectione Firme*, according to the usual Practice, by confessing Lease, Entry and Ouster, &c. it was a Doubt by the Court, if upon such Confession, Lessee may have Trespass for the mean Profits from the Time of the Entry confessed; for it seems it is an Estoppel between the Parties to say, That he did not enter. *Tamen Quare*, because this Confession is taken to Special Purpose only. *Siderf.* p. 210.

If a Writ of Error in Ejectment abates by the Act of God, a second Writ shall be a *Supersedeas.* *Aliter*, where it abates by the Act of the Party. *1 Vent.* 353.

Judgment in Ejectment. The Defendant (Plaintiff) brings a Writ of Error. The Plaintiff, who is Defendant in the Writ of Error, brings a *Scire fac. Quare Executionem non*, to the Intent the Defendant, Plaintiff in Error, might assign Errors. To which the Plaintiff

## The Law of Ejectments.

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tiff in Error pleads, That the Defendant ought not to have Execution, because he was in Possession already, by Virtue of *Hab. fac' Possessionem*. *Per Cur.* It's a Trick for Delay, the *Scire fac'* being only to the Intent that the Defendant may assign Errors, and there can be no such Plea to it in Stay or Delay of Execution. *1 Keb. 613. Wincbcomb's Case.*

*Note,* Where there is a Recovery in Ejectment by Verdict, an Action may be brought to recover the mean Profits from the Time of the Defendant's Entry laid in the Declaration, and at the Trial it is not necessary to prove any Entry of the Defendant, because the Defendant doth in the Rule confess Lease, Entry and Ouster; and also an Entry by the Defendant upon the Plaintiff is found by the Verdict against him. And this Action may be brought either by the Plaintiff in the Action, or by the Lessor of the Plaintiff; and where the Plaintiff brings it, he need only at the Trial to produce his *Possea* of his Recovery.

But where the Lessor brings it, he must prove his Title over again, if it be insisted upon on the other Side, or else he will be nonsuited.

C H A P

## C H A P. XVII.

## Writ of Error.

*Where it lies. Of what Error the Court shall take Conisance without Diminution or Certificate. Variance between the Writ and Declaration. Variance between the Record and the Writ of Error. One Defendant dies after Issue and before Verdict. Nonage in Issue on Error where to be tried. Amendment of the Judgment before Certiorari unaided. Release of Errors from one of the Plaintiffs in the Writ of Error, bars only him that released it, and why. Outlawry in one of the Plaintiffs pleaded in Error. Of Release of Errors by casual Ejector.*

*Where it lies.  
Ejectment before Justices in Wales.*

**E**rror lies in *B. R.* upon a Judgment in Ejectment before the Justices in *Wales*, *per Stat. 27 H. 8.* Error in Real Actions shall be reversed in *B. R.* and in personal Actions by Bill before the President and Council of the Marches; and because Ejectment was a mix'd Action, there was some Doubt, but it was resolved, *ut supra. Moor p. 248. N<sup>o</sup> 391.*

Writ of Error lies in the *Exchequer-Chamber* upon a Judgment in a *Scire fac' in Ejectione. Sid. Cro. Car. 286.*

Lessor or Lessee may have a Writ of Error on Judgment in *Ejectione. Sid. 317.*

In

In a Writ of Error upon a Judgment in *Banco in Ejectione Firme*, is certified a brief Entry of the Writ according to the Course there, and then the Declaration at large, and by the Recital of the Writ which mentions that the Action is brought *de Rectoria de D.*

Of what Error the Court shall not take Conisance sans Certificare.

*viginti Acris terrae & duodecim Acris prati cum pertinentiis in D.* And the Declaration is of a Lease by Indenture of the said Rectory and Tenements *cum pertinentiis (excepta terra pro mensa Vicarii ibidem cum omnibus talibus easiamentis quales Vicarius adiunc habuit cum omnibus talibus decimis, &c.)* And upon Not guilty, a Verdict and Judgment was for the Plaintiff, and assigned now for Error, That Judgment was given *pro Querente*; whereas it ought to be for the Defendant. And after *In nullo est erratum* pleaded, it was moved for Error, That it appears by the Record certified, that the Writ is general of a Rectory, and the Declaration is of a Rectory with certain Exceptions. In this Case, the Court ought to reverse the Judgment for this Cause, in as much as this is not assigned for Error, nor the Writ it self certified; so that the Court may not take Notice that the Writ is as the Entry of it is certified; and this Exception is but a Variance between the Writ and the Declaration, and perhaps this Exception in the Declaration was but *ex abundantia*, and is not Parcel of the Rectory, and then he ought not to have demanded the Rectory with an Exception. And it seems it had not been a good Plea for the Defendant in the first Action, to say that it appears by the Declaration that there is an Exception, &c.

Variance between the Writ and Declaration.

Declaration with an Exception and Pleading in such Case.

with-

## The Law of Ejectments.

without Averment in Fact, that it is Parcel of the Rectory. *Pas. 11 Car. B. R. Gregory and Shepard*, on a Lease made by the Dean and Chapter of Peterborough.

Error upon a Recovery in Ejectment out of the Court of *Durham*. The Error assigned was the Infancy of the Plaintiff in the Ejectment, who appeared by Attorney where he ought to have appeared by his Guardian; and upon Issue joined on the Infancy, it was found for the Plaintiff in the Writ of Error. But this Writ of Error was not sufficient to the Court to proceed to the Reversal: 1. Because the Writ of Error is directed to the Bishop of *Durham* and others by Name, to remove a Record of Ejectment between such and such, which was *coram* the said Bishop and seven others by Name, and the Record removed, seems to be a Record of Ejectment before the Bishop and eight others, so it is not the same Record specified in the Writ; for a Record before eight, and a Record before seven, cannot be intended the same Record. 2. This Writ of Error is directed to the Bishop of *Durham* and six others by Name, and the Return of the Writ (*viz.*) *Respons'* of the Commissioners is by the Bishop and five others only, without making Mention of the sixth Commissioner. *Yelv. p. 211. Ode and Moreton. 2 Rolls Abr. 604.*

In Ejectment, Verdict was given *pro Quer'*, *Quoad ill' parcel' Messuagii prædict' jacen' proxim' ad Messuag' modo F. N. continens' ex Boreal' parte, &c. & quoad resid' pro Def.* and the Judgment was, *Quod Quer' recuperet terminum suum prædict' de C. in prædict' parcel' præ-*

Variance be-  
tween the Re-  
cord and the  
Writ of  
Error.

*prædicti Messuagii jacen' proxim' ad prædict' Messuag' ut præfertur in occupatione prædicta F. N. & continen'; whether this Variance between the Verdict and Judgment be Error. Adjournat'. Qu. If it be not a Jeofail deins Art. Stat. 16, 17 Car. 2. c. 8. Raym. p. 398. Norris and Bayfeild.*

*Ejectione Firme against Two, if after Issue joined, and Venire fac' awarded, one of the Defendants dies; and after a Verdict is given at the *Nisi-prius* for the Plaintiff, and after before Judgment the Plaintiff surmiseth the Death of the one, *ut supra*, and prays Judgment against the other, and Judgment given accordingly without any Answer to it by the Plaintiff; if it be not true that he is dead, as was surmised, this may be assigned for Error, for in as much as the Plaintiff had made this Surmise, it being a Matter of Fact, and the Plaintiff might not have any Answer to it (the Use not being to enter up this, that the Plaintiff does not deny it) the Plaintiff had no other Remedy but to assign this for Error. But this is reported otherwise, p. 767. 1 Rolls Abr. 756. Tiffin and Lenton.*

If A. bring *Ejectione Firme* against B. and C. and after Issue joined B. dies, and after upon the *Hab. Corpora*, which mentions the Issue to be between A. of the one Part, and the said B. and C. a Verdict is given against B. and C. that they are guilty, and Damages against them; but a Surmise is made of this before Judgment, and so Judgment given only against C. This is not erroneous, altho' the Verdict

## The Law of Ejectments.

was against both, in as much as the Judgment was only against him who was in Life. 1 Rolls Abr. 767. *Tiffin and Lenton.*

If *A.* recover against *B.* in *Ejectione Firme* Nonage in *D.*, upon which *B.* brought a Writ of Error upon Error in *B. R.* at *Westminster* and discontinues error, where to it, and after there brought a new Writ of be tried.

Error, *Quod coram vobis residet*, and assigns for Error, That the said *A.* at the Time of the Trial of the first Action was *Commorans*, and within Age, at *Westminster* in *Middlesex*, and that he sued in the said Action by Attorney, and upon the Nonage the Parties are at Issue; this shall be tried in *Westminster*, and not in *D.* where the Land lies, because the *Ejectione Firme* is not any real Action; and in as much as it is specially alledged that he was within Age and *commorans* at *Westminster* when the Writ of Error was brought. 2 Rolls Abr. p. 604. *Orde and Moreton.*

*Deins Age.*

Error of a Judgment in *Ireland* in *Ejectione* was assigned, that the Plaintiff then Defendant was *per Attornat'*, and within Age, Judgment was reversed notwithstanding 17 Car. 2. c. 8. Vide 3 Keb. 384. *D. of Alvermarl and Keneday.*

*Bar by Re-lease.*

In Ejectment one of the Defendants pleaded Not guilty, and Verdict for the Plaintiff against both, and Judgment accordant. Error was brought, because in the *Venire Constantinus Callard* was returned, and so named in the *Distringas*; but in the Pannel annexed thereto *Constantius Callard* was returned and sworn, and so was returned by that Name

Name on the Back of the *Postea*; this was held manifest Error, for they be distinct Names of Baptism, and cannot be amended; but *Curia advisare* from *Hillary Term* till *Pascbe*; in the mean Time the Defendant in the Writ of Error obtained a Release of all Errors from one of the Plaintiffs in the Writ of Error, and the first Day of *Term Pascb.* pleaded it in Bar as a Plea *Puis darrein Continuance*, and thereupon a Demurrer was entred in the Names of both the Plaintiffs in the Writ of Error; for *in nullo est Erratum* being pleaded before, there could not now be any Summons and Severance. *Per Curiam*, this Release shall bar him only that released it, and not the other Plaintiff (though the Action was in the Personality): For the Plea being by Way of Action, to discharge themselves of Damages which were recovered against them, and to be restored to the Possession which was lost by the first Judgment; and they being joined in the first Action by the Act of the Plaintiff, and their own voluntary Act; it is not Reason that the Act of one shall charge or prejudice the other. But otherwise if they had been Plaintiffs in the Record by their own Act. *Cro. Jac. 116. Blewit and Snedlow.*

Release from  
one of the  
Plaintiffs in  
Error, shall  
bar only him  
that released  
it, and why.

Verdict was *pro Quer'* for 10 Messuages, 15 Acres of Land, 15 Acres of Meadow, and 20 Acres of Pasture, and as to the Residue *Non Culp.* And the Judgment was, That the Plaintiff should recover the Messuages and the greater Quantity of Acres which were in the Verdict. Upon which the Plaintiff

X 2 brought

**Amendment  
of the Judg-  
ment before  
a *Certiorari*  
awarded in  
Error.**

**Release of  
Errors from  
one of the  
Plaintiffs in  
the Writ of  
Error plead-  
ed, shall bar  
only him that  
released it,  
and why.**

**Ejectment  
against the  
Release of one  
shall not bar  
the other of a  
Writ of Er-  
ror, because  
this is to re-  
cover no-  
thing, but to  
have Restitu-  
tion of that  
which he lost  
by the Judg-  
ment.**

brought a Writ of Error, and assigned Errors, and had a *Scire fac.* and before the Defendant in the Writ of Error joined in *nullo est Erratum*, it was moved in Common Bench for Amendment of the Judgment. It was objected, 1. That the Time after the Assignment of the Error was past for the Amendment. *Per Cur.* The Time is not past, so long as a Diminution may be alledged, or a *Certiorari* awarded, it may be amended. 2. The Judgment is the Act of the Court, and therefore may not be amended. *Per Cur.* It is the Default of the Clerk, who did not enter the Judgment according to the Verdict. *Jones Rep.* p. 9.

*Ejectione Firme by Two against one De-  
fendant.* And on Not guilty, Verdict for  
the Plaintiff. The Error assigned was, be-  
cause *Constantinus Callard* was returned, and  
so named in the *Distringas*, but in the Pan-  
nel annex'd thereto by the Sheriff, *Constan-  
tius Callard* was returned and sworn, and so  
was returned by that Name on the Back of  
the *Poſtea*. It's manifest Error; for they be  
distinct Names of Baptism, and not amend-  
able. But *Curia adviseare*. In the mean Time  
the Defendant in the Writ of Error obtain-  
ed a Release of all Errors from one of the  
Plaintiffs in the Writ of Error, and the  
first Day of *Easter Term* pleaded it in Bar  
as a Plea, *Puis darrein Continuance*; and there-  
on a Demur entred in the Name of both  
the Plaintiffs in the Writ of Error. For in  
*nullo est Erratum* being pleaded before, there  
could not be any Summons and Severance.  
*Per Cur.* This Release shall bar only him that

released it, for the Plea being by Way of Action to discharge themselves of Damages which were recovered against them, and to be restored to the Possession which was lost by the first Judgment; and they being joined in the first Action, by the Act of the Plaintiff, and not by their own voluntary Act; it is not Reason that the Act of one should charge or prejudice the other, for then by such Practice any one might be charged, and should have no Remedy to discharge himself. And the Judgment was reversed, *quoad* him that did not Release, and that he should be restored to all what he lost, and *quoad* the other who released, that he should be barred in his Writ of Error. *Cro. Jac. 116. Bluit and Snedstow, 2 Rolls Ab. 411. Mesme Case.*

So the Defendant in the Writ of Error pleads Outlawry in one of the Plaintiffs. *Per Cur.* It's no Bar, because this is an Action not to recover any Thing, but to restore them to what they had lost, and to discharge them of Damages and Fines; and they are forced to join, because one of the Plaintiffs was a Defendant in the former Action. *Cro. Jac. 616. Bythell and Harris.*

Error without Bail is a *Supersedeas* in Ejectment, notwithstanding the Act of 13 Car. 2. c. 2. being not within the general Word Trespass. 1 Keb. 308. *Lufion's Case.*

one of the  
Plaintiffs  
pleaded in  
Error.

13 Car. 2. c. 2.

And unless all the Defendants in Ejectment do give Recognizance, it's no *Supersedeas*, for as to the Land it's intire. 3 Keb. 138. *Cole and Levingstone.*

**Baron and  
Feme Lessors,  
it's no Error  
to alledge the  
Death of the  
Wife before  
Judgment.**

Baron seised in the Right of the Feme, makes an Ejectment Lease, and the Lessee brings an Action upon it, and hath a Verdict and Judgment; it's not Error to alledge the Death of the Wife before Judgment, by which the Interest of the Husband, and Lease by him made to the Plaintiff determines, because neither the Wife nor the Husband are Parties to the Action, and this determines upon the Title to the Land; for the Plaintiff may say, That the Husband was seised in his own Right. *1 Rolls Abr. 768. Wilks and Jordan.*

**The Plaintiff  
is Ejectment  
dead before  
Judgment.**

Error was brought to reverse a Judgment in *Ejectione Firme*, and Error in Fact assigned, (*viz.*) That the Plaintiff in the Ejectment was dead before Judgment: To which he that was Attorney for the Plaintiff pleaded, That he was alive at such a Place, and upon this Issue joined, and found that he was dead. *Per Cur.* The Issue is well joined, and the Judgment shall be reversed for this Error without *Scire fac.* against the Executors, for until the Issue tried, none can deny but that the Appearance was good. But the surer Way had been for the Attorney to have pleaded, *Quod venit pro magistro suo D. and not qd. D. venit per Attornat.* *Siderf. p. 93. Dove and Darcen.*

**The Plaintiff  
dies between  
Verdict and  
Judgment,  
the Judgment  
is voidable by  
Error.**

If a Man recover in *Ejectione Firme*, and after his Executor sues Execution by *Scire fac'* against the Recoveree; the Recoveree may not avoid the Judgment, nor stay Execution by saying, That the Plaintiff died between the Verdict and Judgment, or such like. But he

## The Law of Ejectments.

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he is put to his Writ of Error, for the Judgment is only voidable. *1 Rolls Abr. 742. Hide and Markham.*

But in *1 Rolls Abr. 768.* If a Man brings *Ejectione Firme* in *B. R.* and there he hath a Verdict on Trial at the Bar, and after, and before Judgment he dies, and after Judgment is given against him the same Term: This is not Error, because the Judgment relates to the Verdict. *Hide and Mark's Case.*

The Plaintiff  
dies after  
Trial, Judg-  
ment may be  
given.

Lessor of the Plaintiff in Ejectment may have a Writ of Error upon a Judgment in *Ejectione Firme.* *Siderf. 317. Cole's Case.*

Lessor of the  
Plaintiff may  
have a Writ  
of Error.

*Release of Error. Vide supra.*

The Issue was, That *H.* who was casual Ejector, and gave Release of Errors, was not the same Person. Being tried, the Court would not suffer the Defendant to assign Error, but conceived he was barred now. *1 Keb. 755. Keyes and Bredon.*

The Defendant obtains a Release of his casual Ejector, and pleads it to a Writ of Error, of a Judgment by Default, of Ejectment in *Ireland*; altho' the Issue was, that he that made the Release was not the same Person as was casual Ejector, yet *per Cur.* it ought to be set aside, and the Error assigned. *1 Keb. 705. Vid. 7.*

Issue that he  
that made the  
Release was  
not the same  
Person.

X 4

*Release*

*Release by Casual Ejector is a Fraud.*

Release by  
Casual Eje-  
tor, a Fraud.

The Court conceived a Release of Errors obtained of the Casual Ejector by the Lessor being but Fictitious is void. And the Court made a Rule, That no such Release be accepted without Leave of the Court. *1 Keb. 740. Keys and Bredon.*

Release by  
Casual Eje-  
tor, a Fraud.

The Case was, as it is reported in *Raymond 93. Keyes and Bredon.* The Plaintiff obtains a Judgment against his own Ejector, in a Case where an Infant was in Possession; and the Party, concerned in the Lands, brings a Writ of Error in the Name of the feigned Defendant. The Plaintiff in the Writ pleads the Release of the Defendant. *Per Cur.* Such Release shall not be allowed. And the Court will not permit the Party to proceed to try the Issue, if the Release be good or not, because it is to bar the Right of a Third Person.

Ejector dis-  
avows the Suit.

On Ejectment after Judgment against Casual Ejector, for not confessing Lease, Entry and Ouister; the Defendant in the Ejector's Name brought a Writ of Error, and now the Ejector was brought to the Clerk of the Errors, and disavowed the Suit, and thereupon it was prayed by Council, that a *Non Prof.* may be entered, as is the usual Course in such Case. *2 Keb. 579. M. 21 Car. 2. Wats and Lloyd.*

In the Lord *Byron* and Sir *William Fuxon's* Case, Council prayed Leave to discontinue

Writ of Error brought in the Ejector's Name, of Judgment in the County Palatine of Lancaster against him by Default, shewing a Release of Errors by the Casual Ejector: But the Court denied it, but left them to nonsuit the Plaintiff in Error. 2 Keb. 853.

A Release of Error by the Casual Ejector, no Discontinuance in Error. 2 Keb. 853.

Ejectment was brought against eight Defendants in B. C. Error was brought, grounded upon the Judgment, and the Writ was *ad grave damnum iporum*, and the Judgment was only against Three, and other Five were acquitted; the Error was assigned in the Nonage of the Three. *Per Cur.* The Writ of Error was good, tho' it might be also *ad damnum* of those convicted. But being only in the Nature of a Commission, whereby the King commands the Errors to be examined; this Matter is not material. Hob. 70. Relv. 209. By *Twisden*, the constant Practice is for all to join, and *per tot. Cur.* Judgment ought to be reversed against all. Error of a Judgment in *Ejectione Firme*, and in the Record a Space was left to insert the Costs which had not been taxed, if such an imperfect Record be certified; yet it might be amended by Rule of Court there, and then if it be removed by Error, the Court there must amend it. For it is the constant Practice, That if a Record be removed into the King's-Bench out of the Court of Common Pleas by Writ of Error, and afterwards amended by Rule of Court in the Common Pleas,

*Pleas*, the Court of King's-Bench must amend it accordingly. *Vid. Hard. p. 905.* *1 Ventr. 165.* *Bell and Richards.*

Error in Ireland.

Ejectment was brought in C. B. in Ireland, and declares against *Commyn de Castrovilla & Terris de Kilborough*, in such a County. The Plaintiff had Verdict and Judgment. *Commyn* brought a Writ of Error in B. R. in Ireland, and assigns for Error the Want of an Original. The Plaintiff rejoins, That such a Day an Original Writ was delivered to such a one, and concludes to the Country. And the Judgment was reversed there for Want of an Original, on which the Plaintiff brought a Writ of Error for Reversal in B. R. in England. And the Judgment given in B. R. in Ireland was reversed here, for the Matter was discontinued. Because the Defendant in Ireland concludes *al Pais*, where in Truth the Matter of his Plea should be tried by the Record, and the Plaintiff in Error doth not reply, or demur upon the Plea of the Defendant, and so all is discontinued. Also, there was another apparent Error in the Declaration, viz. the Action brought *De castro villa & terris in Kilborough*, without expressing the Number and Certainty of Acres, and upon such general Demand no *Habere fac Possessionem* can be awarded and executed. *Yelv. 117. St. John* verf. *Commyn.*

More

## More Rules in Ejectment.

By Order made 18 Car. 2. General Rules in Ejectment must be entered before any Motion be made for Judgment against the Casual Ejector. *B. R.*

**Q**um p antiquam consuetudinē hujus curie regule ad respondādari & intrācē debent cum Clerico regularū hujus Curie in omnibus actionib⁹ in Curie hic prolat⁹ & pendēt. Que quidem consuetudinē nuper neglect⁹ fuit in actionib⁹ Trans & Ejec⁹ firme, prō evitacione cuius in futuro Ordinat⁹ est qđ quilibet Attoz hujus Curie intrabit cum clericis regularib⁹ generali, regulam ad respondādari in omni actione Trans & Ejec⁹ firme prolat⁹ prius quam aliqua motio fac⁹ fuerit in Curia p judicio versus casual⁹ Ejectorem. Martis prox⁹ post Octab Sancte Trin. Anno 18 Car. 2. Regis.

*B. R.*

Rule; That Attorney's delivering Declarations in Ejectment, sue out a *Latitat*, &c. before they sign Judgment against the Casual Ejector.

**E**T ulterius Ordinat⁹ est quod omnes Attornati hujus Curie qui delibera-  
bunt vel deliberari causabunt ali-  
quam

quam Narrationem in p[ro]rito Trans & Ejec[re] firme alicui Teneū in possessione aliquarū terrarum seu Tenementorum prosequeretur h[ab]et de Latitat versus casual' Ejectoꝝ & affilabunt commune Balliu[m] pro eod[em] antequam signabunt judicium versus casual' Ejectoꝝ in aliqua tali Actione.

## B. R.

Die Martis prox' Post Oct. Sancte Trin. Anno  
14 Car. 2.

Rule; That the Plaintiff's Attorney sue forth  
a Bill of Middlesex or Latitat against the  
Casual Ejector, and to file Common Bail  
before Declaration delivered to the Tenant  
in Possession.

**O**rdinat est p[ro] Curia quā in qualibet actionem de p[ro]rito Trans & Ejec[re] firme, fore prolat[ur] si terre sunt jace[n]d[ae] in Com[itatu] Middlesex, tunc villa de Middlesex, prosecut[ur] fuerit & si terre sunt jace[n]d[ae] extra Middlesex tum h[ab]et de Latitat prosecut[ur] fuerit versus casual' Ejectoꝝ in qualibet tali Ejectione defend[an]t nominat[ur]. Ac etiam quod commune Ballium pro tali Defend[an]t assuletur antequam illa Declaratio p[ro] Villam in hujusmodi Actione deliberat[ur] fuerit alicui Tenenti in possessione tenementorum in hujusmodi Narratione specificat[ur]. Et quod si Attorn[us] hujus curie pro Quer[ela] defecerit in p[re]formatione inde tunc nullum

sum judicium intretur p' Quer' versus  
casual' Ejecō nee Tenens in posses-  
sione cogd' dimissio intration' & eje-  
ction' tenementorum in tali Narratione  
mentionat ad triād' exitum inter par-  
tes pdicas.

B. C.

Rule; In Middlesex and London, to tell the Te-  
nants how and when to appear, and Mo-  
tion for Judgment, must be according to  
this Rule.

V' Ieclimo primo die Junii, 32 Car. 2.  
Ordinat est quod Quer' vel eozd'  
Attoz' sive partes que deliberari fac-  
Narrationes in plito pdic' in dic' Com'z  
Middlesex & Lond' super tali delibera-  
tione inde denuntiabunt Tenez' in pos-  
sessione tenementorum in questione re-  
specive qd' ipsi comparcant per Attoz'  
Cur' hic in Defensione tituli inde initio  
pr' termini post deliberation' Narr ill'  
fact'. Et ultre Ordinat est qd' querend'  
pdic' de cetera nil capiant per motio-  
nem in Cur' hic siens ad judicium ver-  
sus casual' Ejecō pro defectu compas-  
tentie habend' nisi hujusmodi motio fiat  
infra unam septimanā pror' post pri-  
mū diem cujuslibet Termini Sanc'  
Mich. & cujuslibet Termini Pasche. Et  
infra 4 dies pror' post primū diem cujus-  
libet Termini Sanc' Hill. & cujuslibet  
Termini Sanc' Trin.

Judicium

## P R E C E D E N T S.

Judicium in Eject' Firme, quando Def' contetur Actionem & Quer' remittit damna.

**E**t pdic' Def' per A. B. Attorū suum venit & dicit quod ipse non potest dedicere actionem ipsius querentis nec quin ipse culpa sit de Transgr & Ejecione pdic' Modo & Forma prout idem (Quer) superius versus eum Narrabit & Narracione pdic' in omnibus foro veram exprel cognovit. Ideo consideratur quod pdic' (Quer) recuperet versus pdic' (Def.) terminū suū de & in Melsuag pdic' cum pertin adhuc ventur ad damnū pdic' nec non decem solidū promiss & custag suis per ipsū circa Secuam in hac parte apposit' eid (Quer) per Cur Dom Regine hic ex assensu suo ad judicat que quidem damna in toto se attingunt ad, Ec. Et pdic' Def' capiatur. Et super hoc pdic' (Quer) gratias hic in Curia remittit eid Def. damna miss & custag predica. Ideo pdic' (Def') de damnis missis & custag illis sit quietus, Ec. Et super hoc idem (Quer) petit breve Dom Regine de habere faciēti ei plenar possessionē de timentis pdic' cum pertin' & ei concedit, Ec. return coram Domina Regina apud Westm die, Ec. extunc prox' sequent, Ec. idem dies datus est prefat Querent ibid, Ec.

Judicium

## Judicium in Eject. Firme.

I Deo considerat est quod p̄dia' (Quer) recuperet versus p̄dia' (Deft.) ter-  
 minū suū adhuc ventur de & in p̄dia'  
 20 Acris prati ac damna sua p̄dia' p̄  
 Jurat p̄dia' in forma p̄dia' assessa nec  
 non 5 l. pro misis & custag suis per ip-  
 sum circa lectam suam in hac parte ap-  
 pōit eid (Quer) ex assensu suo p̄ Cur  
 Dom Regine hic de incō adjudicat que  
 quidem damna in toto se attingunt ad  
 40 l. & quod p̄dia' (Def) capiatur, Ec.  
 Et super hoc p̄dia' (Quer) petit b̄e  
 Dom Regis de Habere fac Possessionē  
 de tenementis p̄dia' cum pertinē prefat  
 vie ejusdem comit in forma p̄dia' diri-  
 gend & ei concedit, Ec. retornabile co-  
 ram Dom Regina apud Westm die,  
 Ec. prox' post, Ec. idem dies datus est  
 prefat Querenti ibm, Ec.

Intracio judicii pro Def' in plito' Trans' &  
 Eject' Firme.

P Ostea continē inde Processu inter  
 partes p̄dia' de plito p̄dia' per  
 Iurē p̄dia' inde inter eos in respectam  
 eozam Dom Regina apud Westm usque  
 diem June prox' post septimanag  
 Sancte Trin. adtunc prox' sequend nisi  
 p̄dia' & fidelis consiliarius Dom Re-  
 gine Johan. Popham miles Capital  
 Justiciar Dom Regine ad plita in Cu-  
 ria ipsius Dom Regine eozam ipsa Re-  
 gina

gina tenend<sup>i</sup> assign<sup>i</sup> prius die Sabbath<sup>i</sup>  
prox' post Octab. Sante Trin. apud  
Guildhall London p formam Stat<sup>i</sup>, Et  
Ven<sup>i</sup> pro defens<sup>i</sup> Jurat, Ec. Ad quen-  
diem Lune prox' post tres septimanas  
Sante Trin. etiam Dom<sup>i</sup> Regina apud  
Westm<sup>i</sup> vener partes pdic<sup>i</sup> per Atto-  
nat suos pdic<sup>i</sup>. Et pfat Capital<sup>i</sup> Ju-  
sticiar<sup>i</sup> etiam quo, Ec. misit hic recor-  
dum suum etiam eo hic in hac verba  
ss. Postea ss. die & Loco infra contento-  
ram Joh. Popham mil. Capital<sup>i</sup> Ju-  
sticiar<sup>i</sup> infrascript<sup>i</sup> associat sibi Edw<sup>i</sup>  
Bawtre per formam Statuti, Ec. ve-  
nit tam infra nominat L. & quam in-  
frascript<sup>i</sup> J. P. p Attornat suos infra  
content. Et Jur<sup>i</sup> Jur<sup>i</sup> unde infra si-  
mentio exact<sup>i</sup> silitur ven<sup>i</sup> qui ad verita-  
tem de infracontent<sup>i</sup> dicendi electi triat  
& jurat dicunt super sacrum suum qd  
pdic<sup>i</sup> J. P. non est culpabilis de trans-  
gressione & Ejectione Firme infraspec-  
t<sup>i</sup> prot ut idem Johan. interius plitando  
allegavit. Ideo considerat est quod p-  
dic<sup>i</sup> L. nihil capiat per Willam suam  
pdic<sup>i</sup> sed pro falso clamore suo inde sit  
in mis<sup>i</sup>. Et pdic<sup>i</sup> J. P. eat inde sine  
die, Ec.

No Habere  
fac<sup>i</sup> Possessio-  
nem if the  
Judgment be  
above an  
Years stand-  
ing, unless  
revived by  
Sci<sup>i</sup> fac<sup>i</sup>.

Note. The Court will not grant an *Habere fac<sup>i</sup> Possessionem* upon a Judgment in Ejectment above a Years standing, unless it be re-  
vived by *Scire fac<sup>i</sup>*; and where an *Habere fac<sup>i</sup> Possessionem* was sued out and executed after an Year and a Day without a *Scire fac<sup>i</sup>*, a Writ of

of Restitution was awarded. *Quia erronice emanavit. Mich. i Anne, Withers's Case.*

Habere fac' Possessionem in Trans' & Ejectment.

**V**I C. B. Saltm. Cum A. f. amiger nuper in Cur' nostra coizam nob̄ p Willam suam sine h̄i nostro ac p judicium ejusdem Cur' recuperavit versus R. H. Gen' terminū suum adhuc ventur' de E in uno Capital Messuag, Ec. cum pertin̄ in f. in Comit tuo neenō 200 Acer' terre cum pertin̄ in f. pdit' que I. A. E v. P. 6 die Sept. Anno Regni nostri septimo eid (Quer') ad terminū anno qui nondum preteriit dimisit videlicet a Feste Sancti Michaelis Archis Anno, Ec. usq; Ec. extunc prox' sequend plenarie complend E finiend qui quidem termin' Annō preteriit pdit' R. postea scilicet 28 die Octob. Anno Regni nostri 7 supradic' ipsum A. possessione Messuag pdit' E ceterorum pmissorum pdit' cum pertin̄ Vi E Armis, Ec. Ejecit ipsumq; A. inde expulit E amovit. Ideo tibi precepimus quod prefat A. possessionem suam termini sui predicit adhuc ventur' de E in Capitali Messuag E ceteris pmissis superius specificat sine dilacione Habere facias. Et qualiter hoc h̄e exercevit fuit constare fac' nob̄ apud v. (tali die) precepimus etiam tibi quod capias predicit R. H. si, Ec. Et salvo, Ec. Ita

qđ

qd habeas, &c. ad prefat' diem ad satisfaciend' prefat' A. de quinqz libris & decem solid' pro damnis suis que sustinuit tam occasione transg' & ejact' pred' quam promiss' & custag' suis per ipsum circa sectam suam in hac parte app'it unde conviclus est sicut nobis constat de recordo, Et habeas, &c.

Habere facias Possession' post Preve de Errore in Ejectment.

**W**ill'us & Maria Dei gratia Anglie, Scotie, Francie, & Hibernie, Rex & Regina Fidei Defensores, &c. Vic' Midd salutem. Cum R. W. nuper in Curia nostra coram Georgio Treby Milit & Sociis suis Justiciar nostris de Banco per Preve nostrum ac per judicium ejusdem Curie recuperavit versus W. P. nuper de Lond, Peonian, Termid suum de & in octo Messuagiis cum pertin' in Paroch St. Martini in campis & St. Clementis Dacorum in Comit tuo que Christopher Cratsord Gen' primo die Ianuarii Anno Regni nostri Tertio dimisit prefato R. habend' & occupand' sibi & assignat suis a vicesimo 5 die Decemb' tunc ult' preterit usq' finem & terminum quinqz annorum extunc prox' sequen' & plenarte comprehend' & finiend' qui nondum preteriit & unde predict' W. postea scilicet predict' i die Ian Anno tertio supradict' vi & armis in tenebruta predict' cum pertin' intravit &

ip:

ipsum s. a possessione sua expulit & amovit ac cum a dictum a firma sua predicta inde ejus convicte est sicut per suspitionem recordi & processus inde que in Curia nostra coram nobis virtute cuiusdem Previs noscitur de errore corrigitendo per predictum W. de & super premisis prosequit nuper venire fecimus & in eadē Curia nostra coram nobis jam recessit nobis constat de Recordo unde idem iudicium in eadē Curia nostra coram nobis affirmatur sicut nobis sibi constat de Recordo. Et ideo tibi precipimus quod prefato s. Possessionem termini sui predicti adhuc ventur de & in clementis predictis cum pertinere sine dilatatione habere fac. Et qualiter hoc Prebe nostrum fueris executus nobis in Octab. Purificat beate Marie ubi cum fuerimus in Anglia constare facias hoc Prebe nostrum nobis remittere. Teste Johanne Holt apud Westm<sup>m</sup> viceximo octavo die Novembris Anno Regni nostri quart.

Holt. Colman.

Couenant of an House (and Goods) by Lease  
made by Baron and Feme of the Land of  
the Wife.

**W.** s. Attach fuit ad respondere  
proposito quare videlicet ac-  
quis unum messuagum cum pertinente in eis  
quod J. A. & J. ux. eius J. B. ad  
firmari dimiserunt ad terminum 20  
annorum qui illum prefat J. E. dimis-  
serunt.

sit ad eundem terminum qui nondum preteriit, intravit & bona & catalla ad valorem 10 l. in eodem Messuag inventus cepit & asportavit & ipsum I. G. a firma predicta ejecit & alia enormia ei intulit ad grave damnum ipsius I. G. & contra pacem Domini Regis nunc, Ec. Et unde idem I. G. per I. Q. Attorium suum queritur quod predictus W. i Die, Ec. Anno, Ec. vii & armis unum Messuag cum pertinente in C. quod predictus I. A. & I. ux' ejus 24 Die, Ec. Anno, Ec. apud C. predictus prefatus I. B. ad firmam dimiser habend eidem I. ad termino 20 Annorum reddendo inde Annuat eisdem I. A. & I. per primos tres Annos & dimid unius anni predicti termini, Ec. Qui quidem terminum nondum preteriit intravit & bona & catalla sua videlicet duo Scabellae duo Cathedras, Ec. ad valorem, Ec. in eodem Messuag inventus cepit & asportavit ipsum I. G. a firma sua predicta ejecit & alia enormia, Ec. ad grave damnum, Ec. Et contra pacem, Ec.

Habere fac' Possessionem in Ejctione Firmatam de termino Annorum in certis tementis quam de & pro possessione bonorum & catallorum in eisdem tementis inventis.

ff. V I.C. — saltm. Scias quod consideratum est in Curia nostra coram Justiciariis nostris apud Westm quod I. C. habeat executionem versus quendam A. B. nuper de, Ec. termini sui de

E in uno Messuagio, Et. cum pertin<sup>o</sup>  
que R. J. Baronettus (tali Die & An-  
no) prefat<sup>r</sup> J. C. dimisit habend<sup>e</sup> & oc-  
cupand<sup>e</sup> sibi & assignat suis a festo, Et.  
tunc ult<sup>r</sup> preterit usq<sup>z</sup> finem & terminum  
7 Annorum extunc prox<sup>r</sup> sequen<sup>r</sup> & ple-  
narie comprehend<sup>r</sup> qui nondum preteriit,  
Et unde predic<sup>r</sup> A. in predict<sup>r</sup> Messuag,  
Et. cum pertin<sup>o</sup> intravit, Et bona & ca-  
talla ipsius J. ad valentiam 10 Librar<sup>r</sup>  
in eisdem Messuag, Et invent<sup>r</sup> cepit &  
asportavit, Et ipsum J. a firma & sua  
pred<sup>r</sup> ejecit, Ideo tibi precipimus qd  
prefat<sup>r</sup> J. plenarium possessione & resti-  
tutionem & termini sui predict<sup>r</sup> de & in  
tenementis predict<sup>r</sup> cum pertin<sup>o</sup> ac bo-  
norum & catalogorum predict<sup>r</sup> haber &  
deliberar fac, Et qualiter hoc precept<sup>r</sup>  
nostrum fuerit execut<sup>r</sup> constare fac sile  
Justicia nostr<sup>a</sup> apud Westm a die  
sante Trinitat<sup>r</sup> Et. in tres septiman<sup>r</sup>  
cum Ca' Sa' pro damnis.

— (Ut supra usq<sup>z</sup> septimanas) Pre-  
cipimus etiam tibi qd *capias* predict<sup>r</sup> (T.  
Def') si invent<sup>r</sup> fuerit in balliva tua  
& eum salvo custod, Ita qd *Habeas*  
*corpus* ejus coram Justiciariis no-  
stris apud Westm ad prefat<sup>r</sup> terminum  
ad satisfaciend<sup>r</sup> prefat<sup>r</sup> J. de 7 Libris  
que eis J. in ead<sup>r</sup> curia nostra adjudic-  
tar<sup>r</sup> fuerunt pro damnis suis que ha-  
buit occasione transg & ejectionis pre-  
dictar<sup>r</sup> unde convictus est, Et *habeas*  
tibi, Et.

## Count upon a Demise Parol.

Hertford' sc. J. W. nuper de B. in Com-  
 tach fuit ad respondū f. O. Arm' de  
 placito quare vi & armis unum dñe-  
 luag, &c. cum pertid in Hartsboȝn que  
 Sulanna Andrews vid presat f. ad  
 terminum qui nondum preteriit intra-  
 vit & ipsam a firma sua predia' eje-  
 cit, Et alia enormia ei insulit ad  
 grave damnum ipsius f. & contra pa-  
 rem Dom' Regis nunc, &c. Et inde  
 idem S. per Georgium D. Attornat  
 suum queritur qd cum predia' Su-  
 lanna 7 die Feb' Anno Regni Do-  
 mini Regis nunc quarto decimo apud  
 Bushey predia' dimisisset eis f. te-  
 nementa predica' cum pertid habet & te-  
 neu' eis f. a decimo octavo Janu-  
 arii tunc ult' preterit usq' finem &  
 terminum vigint' & unius Annorum  
 extunc prox' sequend' & plenarie compleand'  
 & finiend' virtute ejus dimissionis  
 idem f. in tenementa predia' cum  
 pertid intravit & fuit inde possesso-  
 nat ipsoq' f. sic inde possessionat ex-  
 istend' predic' Johannes postea scilicet  
 8 Die Feb' Anno quarto decimo su-  
 praedit' vi & armis, &c. tenementa  
 predica' cum pertid que predic' Su-  
 lanna eis f. in forma predia' dimisit  
 ad terminum predict' qui nondum pre-  
 teriit intravit, Et ipsum a firma sua  
 predia' ejecit, Et alia enormia, &c. ad  
 grave

grave damnum, &c. Ac contra partem unde dicit quod deteriorat est ad valentiam cent Librar & inde producitam, &c.

Simile, with a Simul cum de placito quare predict' W. (Simul cum W. H. nuper de, &c. & H. H. nuper de, &c.) vi & armis.

## Smile,

**P**EAK a Demise pro 5 Years, Si J. H. E. H. & H. H. fratres & sorores de Lessor tamdiu vixerint.

In the Count, —— Plenarie complendi & finiendi si J. H. E. H. & H. H. fratres & sorores naturale ipsius Jacobi (Lessee) vel aliquis seu alter eorum tamdiu vivere contingerent virtute cuius dimissionis, &c.

— Dimisisset prefat M. predict' molendinum aquaticum cum pertinendo habendo & tenendo sibi & assignato suis a sigillatione & deliberatione Indentur predict' usque finem & terminum 5 Annorum ex tunc prox' sequend, &c.

Hab' fac' Posseſſ' versus Exec's pro defalcat'.

**V**IDE, &c. Scias quod T. B. in Curia nostra eozam Justiciar nostris apud Westm per considerat ejusdem Curie recuperavit terminum suum de uno Messuagio, &c. cum pertinendo versus W. f. & G. f. Executores Testament cujus A. f. nuper de C.

de Com<sup>m</sup> tuo Neoman, per defalc<sup>i</sup> ipsorum M. & G. que R. B. Gen<sup>m</sup> tali Die & Anno prefat A. dimisit habend<sup>e</sup> & occupand<sup>e</sup> sibi & assignid suis a festo, Et. tunc ult<sup>r</sup> preterit usq<sup>z</sup> finem & terminid s<sup>r</sup> Annorum extunc prox<sup>r</sup> sequend<sup>e</sup> & plenarie complend<sup>e</sup> qui nondum preteriuit, Et unde predic<sup>r</sup> A. Et. in vite sua ipsum C. a possessione sua predic<sup>r</sup> expulit eoz & amovit ac eundem C. a firma ejecer, Ideo tibi precip<sup>r</sup> q<sup>z</sup> prefat C. possession suam termini sui predic<sup>r</sup> adhuc ventur<sup>r</sup> de & in predia tenementis cum pertinid sine dilatione habere fac, Et qualiter, Et.

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